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**INTERNATIONAL LAW**  
**DOCUMENTS**  
**1944-45**



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## PREFACE

The publication of the Naval War College on international law for the years 1944-45 has been prepared, as formerly since 1938, in collaboration with Payson Sibley Wild, Jr., Ph. D., professor of international law, Harvard University, and associate for international law, Naval War College.

Discussions by the Naval War College classes have given special attention to international law in its relation to the conduct of the war just ended. Important and relevant documents concerning belligerents and neutrals also have been under consideration. Documents cited in this volume are among those discussed.

While certain of these documents are easily accessible, others have not yet appeared in any collection and are not readily available to naval officers.

W. S. PYE,  
Vice Admiral, United States Navy (Ret.)  
President, Naval War College.

November 19, 1945.





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## I. CONTRABAND OF WAR

### 1. *Early Attitude toward Contraband*

"The word contraband, *Latin contrabandum*, implied disregard of a decree or prohibition. The word was used in early times in referring to domestic restrictions usually upon trade in named articles as in regard to trade in salt which often was a government monopoly. Later prohibitions were issued restricting within specified areas trade in materials which might be of use in war.

"The prohibition on export of arms, . . . was common in Roman and Byzantine periods when it was extended to supplies which might be serviceable to possible enemies. At times religious penalties were prescribed by the early church for those who furnished war materials to infidels. In these instances the measures taken were domestic or applied to those under the authority of the source of the prohibitions and the prohibitions might be applied both in time of peace and in time of war. Kings of England in the fourteenth century issued prohibitions, sometimes in regard to furnishing articles to nationals of named states and sometimes in regard to furnishing specified articles to any foreigner. England also made treaties in this century prohibiting the supplying of specified articles under penalty of forfeiture to the king (Edward III, 1370).

"Gradually the prohibitions aimed at regulating domestic trade began to extend to the activities of foreign merchants in time of war. This extension created the demand that for the security of traders the list of prohibited areas should be made known either by previous treaty agreement or by special proclamation, and such action became usual from the seventeenth century. The early enumerations were not based on any uniform principle but were often determined by political or other motives.

"It was easy to extend the domestic prohibition of furnishing certain goods to certain areas or to infidels by analogy to the furnishing of such goods to enemies.

"As belligerents would have no authority over acts of traders within neutral jurisdiction, they began to seize goods of the nature of contraband when these were outside of the immediate control of the neutral state, as in transit on the high sea. Here there would be a degree of conflict between the rights of the neutral to protect the shipping under its national flag and the right of the belligerent

to prevent the delivery to his opponent of goods which might be used for his defeat or injury. The right of the belligerent was to a degree gradually conceded as dominant over the right of the neutral trader, and the belligerent assumed the right to enumerate by proclamation, or otherwise to determine, what should be regarded as under the ban.

“The furnishing of contraband was, at first, regarded as an act for which the state should be held responsible. Gradually the problem of supplying of contraband by subjects of neutral states gave rise to controversies. Attempts were made to extend to states responsibility for acts of their subjects. The discussions of these topics were often by theologians because prohibitions had been against furnishing contraband to infidels and the course of argumentation differed from modern discussions though involving like principles. This was especially true of the fourteenth and fifteenth centuries.” (United States Naval War College, *International Law Situations*, 1933, 2-3.)

## 2. *Mingling of Early and Modern Attitudes.*

The mingling of the modern and earlier attitude is demonstrated in the writing of Gentilis (1552-1608) who emphasized the negative aspect of the Golden Rule—

“that one should not do unto others what he would not that they should do to him”.

“Let no one have the power to transport wine, oil, or any liquid to heathendom even to give them a taste, to say nothing of satisfying the demands of trade.” “Let no one dare to sell to alien heathen . . . coats of mail, shields, bows, arrows, broadswords, swords, or arms of any other sort whatsoever. Let absolutely no weapons be retailed to them by anyone, and no iron at all, whether already made up or not, for it would be harmful to the Roman Empire, and would approach treason to furnish the heathen, who ought to be without equipment, with weapons to make them stronger. But if anyone shall have sold any kind of arms anywhere to alien heathen of any nation whatsoever in violation of the interdicts of our holy religion, we decree that all his goods be straightway confiscated, and then he too suffer capital punishment.” Gentilis, *Hispanicae Advocacionis*, bk. I, chap. XX); (United States Naval War College, *International Law Situations*, 1933, 4.)

“The neutral began to demand that the evidence that the trade

would be dangerous to the belligerent must also be clear not only from the nature of the goods themselves which might, if going to another neutral, be innocent, but that the goods if liable to capture must have an enemy destination. The nature of the goods and the destination thus became early determining factors in liability for contraband." (United States Naval War College, *International Law Situations*, 1933, 4.)

### *Grotius (1583-1645) :*

"But there often arises the question. What is permissible against those who are not enemies, or do not want to be called enemies, but who furnish our enemies with supplies? For we know that this subject has been keenly debated in both ancient and modern times, since some champion the relentlessness of warfare and others the freedom of commercial relations.

"First, we must make distinctions with reference to the things supplied. There are some things, such as weapons, which are useful only in war; other things which are of no use in war, as those which minister to pleasure; and others still which are of use both in time of war and at other times, as money, provisions, ships, and naval equipment." (Carnegie Endowment for International Peace, Grotius, *De Jure Belli ac Paci*, Vol. II, bk. III, chap. I, V, 601); (United States Naval War College, *International Law Situations*, 1933, 4-5.)

### 3. *Eighteenth and Early Nineteenth Centuries*

By the time of the American Revolution no common treatment or definition of contraband had been adopted by the nations of the world, but bilateral treaties negotiated by the United States in the late eighteenth and early nineteenth centuries indicated the trend toward adoption of the doctrine of "free ships, free goods, except contraband of war." These treaties further emphasized "character of the goods" as a criterion of contraband by the inclusion of lists of articles, although attempts to establish definitive lists of *absolute* and *conditional* contraband were not generally favored until late in the nineteenth century.

Although the nature of contraband remained ob-



scure during this period because of the conflicting conceptions held by neutrals and belligerents, two simple criteria of contraband emerged stronger than before: (1) enemy destination and (2) belligerent purpose of the goods as described in appropriate treaty lists. To be classed as contraband, goods had to fulfill both specifications. Ownership, neutral or enemy, of goods aboard a neutral vessel did not, in itself, determine the status of the goods as contraband or noncontraband despite the efforts of some neutral countries which argued "free goods always free".

During this period of conflict and confusion, it must be remembered, nations generally recognized the right of belligerents to capture all enemy ships as prizes and to seize all enemy-owned goods on board. In regard to neutrally owned goods on board the captured enemy ship, there was no clear rule to apply, for some nations maintained that free or neutral goods are always free while others claimed that neutral goods aboard an enemy ship, with the exception of contraband of war, are free.

1. ARTICLE 7. "All and every the subjects and inhabitants of the Kingdom of Sweden, as well as those of the United States, shall be permitted to navigate with their vessels, in all safety and freedom, and without any regard to those to whom the merchandizes and cargoes may belong, from any port whatever, and the subjects and inhabitants of the two States shall likewise be permitted to sail and trade with their vessels, and, with the same liberty and safety, to frequent the places, ports, and havens of Powers enemies to both or either of the contracting parties, without being in any wise molested or troubled, and to carry on a commerce not only directly from the ports of an enemy to a neutral port, but even from one port of an enemy to another port of an enemy, whether it be under the jurisdiction of the same or of different Princes. And as it is acknowledged by this treaty, with respect to ships and merchandizes, that free ships shall make the merchandizes free, and that everything which shall be on board of ships belonging to subjects of the one or the other of the contracting parties shall be considered as free, even though

the cargo, or a part of it, should belong to the enemies of one or both, it is nevertheless provided that contraband goods shall always be excepted; which being intercepted, shall be proceeded against according to the spirit of the following articles. It is likewise agreed that the same liberty be extended to persons who may be on board a free ship, unless they are soldiers in the actual service of the said enemies."

ARTICLE 8. "This liberty of navigation and commerce shall extend to all kinds of merchandizes, except those only which are expressed in the following article, and are distinguished by the name of contraband goods."

ARTICLE 9. "Under the name of contraband or prohibited goods shall be comprehended arms, great guns, cannon-balls, arquebuses, musquets, mortars, bombs, petards, granadoes, saucisses, pitch-balls, carriages, for ordnance. musquet-rests, bandoleers, cannon-powder, matches, saltpetre, sulphur, bullets, pikes, sabres, swords, morions, helmets, cuirasses, halbards, javelins, pistols and their holsters, belts, bayonets, horses with their harness, and all other like kinds of arms and instruments of war for the use of troops."

ARTICLE 10. "These which follow shall not be reckoned in the number of prohibited goods, that is to say. All sorts of cloths, and all other manufactures of wool, flax, silk, cotton, or any other materials; all kinds of wearing apparel, together with the things of which they are commonly made; gold, silver coined or uncoined, brass, iron, lead, copper, latten, coals, wheat, barley, and all sorts of corn or pulse, tobacco; all kinds of spices salted and smoked flesh, salted fish, cheese, butter, beer, oyl, wines, sugar; all sorts of salt and provisions which serve for the nourishment and sustenance of man. all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail-cloth, anchors, and any parts of anchors, ship-masts, planks, boards, beams, and all sorts of trees and other things proper for building or repairing ships. Nor shall any goods be considered as contraband which have not been worked into the form of any instrument or thing for the purpose of war by land or by sea, much less such as have been prepared or wrought up for any other use, all which shall be reckoned free goods, as likewise all others which are not comprehended and particularly mentioned in the foregoing article, so that they shall not by any pretended interpretation be comprehended among prohibited or contraband goods. On the contrary, they may be freely transported by the subjects of the King and of the United States, even to places belonging to an enemy, such places only excepted as are besieged, blocked, or invested; and

these places only shall be considered as such which are nearly surrounded by one of the belligerent powers." (Treaty of Amity and Commerce, United States and Sweden, 1783; Malloy, *Treaties, Conventions*, II, 1727-8.)

2. ARTICLE 16. "This liberty of commerce and navigation shall extend to all kinds of merchandizes, excepting those only which are distinguished by the name of contraband; and under this name of contraband or prohibited goods shall be comprehended—

"1st. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuzees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds and grenades, bombs, powder, matches, balls and all other things belonging to the use of these arms.

"2d. Bucklers, helmets, breast plates, coats of mail, infantry belts and clothes made up in the form and for a military use.

"3d. Cavalry belts, and horses with their furniture.

"4th. And generally all kinds of arms and instruments of iron, steel, brass and copper or of any other materials manufactured, prepared and formed expressly to make war by sea or land."

ARTICLE 17. "All other merchandise and things not comprehended in these articles of contraband, expressly enumerated and classified as above, shall be held and considered as free and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places which are at that time besieged or blockaded; and, to avoid all doubt in this particular, it is declared that those places are only besieged or blockaded which are actually attacked by a force capable of preventing the entry of the neutral (Treaty, United States and Brazil, 1828; United States Naval War College, *International Law Situations*, 1933, 6.)

#### 4. *Late Nineteenth Century*

With the Declaration of Paris, signed by representatives of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey in 1856, the nations of the world began to agree upon a formula for the treatment of neutral commerce.

"2. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre;

"3. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi; . . ."



("2. The neutral flag covers enemy goods with the exception of contraband of war.

"3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.") (Declaration of Paris, April 16, 1856; *British and Foreign State Papers*, vol. 46. 27.)

Although the United States never signed the Declaration of Paris, provisions similar to those of the Declaration of Paris were included in bilateral treaties concluded by the United States with other countries.

ARTICLE 15. "It shall be lawful for the citizens of the United States of America and of the Republic of Bolivia, to sail with their ships, with all manner of liberty and security, no distinction being made who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are, or hereafter shall be, at enmity with either of the contracting parties. It shall likewise be lawful for the citizens aforesaid to sail with their ships and merchandise before mentioned, and to trade with the same liberty and security, not only from places and ports of those who are enemies of both or either party, to the ports of the other, and to neutral places, but also from one place belonging to an enemy, whether they be under the jurisdiction of one power or of several."

ARTICLE 16. "The two high contracting parties recognize as permanent and immutable the following principles, to wit:

"1st. That free ships make free goods: that is to say, that the effects or goods belonging to subjects or citizens of a power or State at war are free from capture or confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

"2d. That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband of war.

"The like neutrality shall be extended to persons who are on board a neutral ship with this effect, that although they may be enemies to both or either party, they are not to be taken out of that ship unless they are officers or soldiers, and in the actual service of the enemies. The contracting parties engage to apply these principles to the commerce and navigation of all such powers and States as shall consent to adopt them as permanent and immutable."

ARTICLE 17. "This liberty of navigation and commerce shall extend to all kinds of merchandise, excepting those only which are

distinguished by the name of contraband of war, and under this name shall be comprehended:

"1st. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuses, rifles, carbines, pistols, pikes, swords, sabers, lances, spears, halberds, and grenades, bombs, powder, matches, balls, and all other things belonging to the use of these arms.

"2d. Bucklers, helmets, breastplates, coats of mail, infantry-belts and clothes made up in the form and for a military use.

"3d. Cavalry-belts, and horses, with their furniture.

"4th. And, generally, all kinds of arms, offensive and defensive, and instruments of iron, steel, brass and copper, or any other materials manufactured, prepared and formed expressly to make war by sea or land."

ARTICLE 18. "All other merchandise and things not comprehended in the articles of contraband explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by the citizens of both the contracting parties, even to places belonging to an enemy, excepting only those places which are at that time besieged or blockaded; and to avoid all doubt in his particular, it is declared that those places or ports only are besieged or blockaded which are actually attacked by a belligerent force capable of preventing the entry of the neutral." (Treaty, United States and Bolivia, 1858; Malloy, *Treaties, Conventions*, I, 118-9.)

### *Continuous Voyage and Contraband*

The doctrine of continuous voyage was developed by Great Britain in connection with the so-called 'Rule of 1756' and was applied by the British Prize Courts only to trade between British Colonies and foreign countries, especially during the mercantilist period. As far as we know, the courts of the United States during the Civil War were the first to extend and apply the doctrine of continuous voyage to the carriage of contraband of war. No reported case before this time can be found in British courts where this doctrine has been applied to contraband.

This doctrine was applied by the American courts

against British shipping during the Civil War, and this application seems to have been acceded to by the British Government of the time. This application was supported, moreover, by an international commission which sat under an Anglo-American treaty of 1871. This commission, composed of an Italian, an American, and a British delegate, unanimously disallowed the claims made in the case of *The Peterhoff*.

The application of the doctrine of continuous voyage as in *The Peterhoff* provided a precedent for British actions in World War I. After *The Peterhoff* the application of the doctrine of continuous voyage to absolute contraband shipped from one neutral state to another with a belligerent state as the ultimate destination was adopted in general practice. The doctrine could be applied to conditional contraband shipped from one neutral state to another with a belligerent state as the ultimate destination only if it could be proved that the goods were actually destined for the government, the military forces, or some other governmental institution. In *The Peterhoff* the two types of contraband goods were distinguished, but the names "absolute" and "conditional" were not applied to them.

The application of the doctrine of continuous voyage to contraband necessitated, therefore, as in *The Peterhoff* a clear distinction between absolute and conditional contraband in the minds of the court and an intensive examination by the court into the true ultimate destination of goods shipped from one neutral state to another.

In the case of *The Peterhoff*, 1866, Justice Chase, speaking for the United States Supreme Court, declared:

"... Thus far we have not thought it necessary to discuss the question of actual destination beyond Matamoras. Nor need we



say more upon that general question than that we think it a fair conclusion from the whole evidence that the cargo was to be disposed of in Mexico or Texas as might be found most convenient and profitable to the owners and consignees, who were either at Matamoras or on board the ship. Destination in this case becomes specially important only in connection with the question of contraband.

"And this brings us to the question: was any portion of the cargo of the *Peterhoff* contraband?

"The classification of goods as contraband or not contraband has much perplexed text-writers and purists. A strictly accurate and satisfactory classification is perhaps impracticable; but that which is best supported by American and English decisions may be said to divide all merchandise into three classes. Of these classes, the first consists of articles manufactured and primarily and ordinarily used for military purposes in time of war; the second, of articles which may be and are used for purposes of war or peace, according to circumstances; and the third, of articles exclusively used for peaceful purposes. Lawrence's Wheaton, 772-776, note; *The Commercen*, 1 Wheaton, 382, Dana's Wheaton, 629, note; Parsons', Mar. Law, 93-94. Merchandise of the first class, destined to a belligerent, is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege.

"A considerable portion of the cargo of the *Peterhoff* was of the third class and need not be further referred to. A large portion, perhaps, was of the second class, but is not proved, as we think, to have been actually destined to belligerent use, and cannot therefore be treated as contraband. Another portion was, in our judgment, of the first class, or, if of the second, destined directly to the rebel military service. This portion of the cargo consisted of the cases of artillery harness, and of articles described in the invoices as "men's army bluchers," "artillery boots," and "government regulation gray blankets." These goods come fairly under the description of goods primarily and ordinarily used for military purposes in time of war. They make part of the necessary equipment of an army.

"It is true that even these goods, if really intended for sale in the market of Matamoras, would be free of liability; for contraband may be transported to neutrals to a neutral port, if intended to make

part of its general stock in trade. But there is nothing in the case which tends to convince us that such was their real destination, while all the circumstances indicate that these articles, at least, were destined for the use of the rebel forces then occupying Brownsville, and other places in the vicinity.

"And contraband merchandise is subject to a different rule in respect to ulterior destination than that which applies to merchandise not contraband. The latter is liable to capture only when a violation of blockade is intended; the former when destined to the hostile country, or to the actual military or naval use of the enemy, whether blockaded or not. The trade of neutrals with belligerents in articles not contraband is absolutely free, unless interrupted by blockade; the conveyance by neutrals to belligerents of contraband articles is always unlawful, and such articles may always be seized during transit by sea. Hence, while articles, not contraband, might be sent to Matamoras, and beyond to the rebel region, where the communications were not interrupted by blockade, articles of a contraband character, destined in fact to a State in rebellion, or for the use of the rebel military forces, were liable to capture, though primarily destined to Matamoras.

"We are obliged to conclude that the portion of the cargo which we have characterized as contraband must be condemned." *The Peterhoff*, 1866. An American Case. 5 *Wall.* 28. Briggs, H. W., *The Law of Nations*, (New York, 1938), 917-8.)

### 5. *Twentieth Century Before World War I*

Belligerent destination and purpose remained, at the beginning of the twentieth century, as the general criteria for contraband of war. Conscious efforts were made to establish two definitive categories and lists of contraband: (1) absolute and (2) conditional, consequently adding refinements and conditions in regard to destination and purpose. The doctrine of continuous voyage was to apply only to absolute contraband.

1. Article 34. "The term 'contraband of war' includes only articles having a belligerent destination and purpose. Such articles are classed under two general heads:

"(1) Articles that are primarily and ordinarily used for military purposes in time of war, such as arms and munitions of war, mili-

tary material, vessels of war, or instruments made for the immediate manufacture of munitions of war.

“(2) Articles that may be and are used for purposes of war or peace, according to circumstances.”

“Articles of the first class, destined for ports of the enemy or places occupied by his forces, are always contraband of war.”

“Articles of the second class, when actually and especially destined for the military or naval forces of the enemy, are contraband of war.” (United States Naval War Code of 1900. United States Naval War College, *International Law Discussions*, 1903, 82.)

2. During the Russo-Japanese War, the Vladivostok Prize Court condemned a shipment of flour, part of the cargo on board the *Arabia*. The American Ambassador to Russia reported Russia's attitude as being as follows:

“... to unconditionally accept as noncontraband all merchandise not universally accepted or described in their own rules as such would open the door to contractors in Japan to import food stuffs and other merchandise without limit for account of the Japanese Government; that is, on account of or in destination of the enemy. That the Russian Government could not but consider as contraband a cargo of flour consigned to a port at which was quartered a large body of troops, and that extending this principle the ultimate destination of the cargo had to be taken into consideration, although its direct consignment might be to a merchant in an open port.” (Ambassador McCormick to Secretary of State Hay, Sept. 21, 1904, *United States Foreign Relations*, 1904, 767-8.)

3. The Japanese Prize Courts in 1905 held that a cargo of rock salt on board the *Antiope* was contraband because it was destined for preserving fish for the Russian military forces. (*Russian and Japanese Prize Cases*, II, 389.)

4. The American attitude during this period toward contraband is indicated partially in further documents regarding the case of the *Arabia*.

“The same criterion of decision is announced by Kent, Halleck, and other authoritative publicists—that if the port be a general commercial one, it is presumed that the articles are intended for civil use, but if the great predominant character of the port is that of a port of naval equipment, it will be presumed that the



articles were going for military use, and that the presumption of innocence exists in all cases when they are destined to a commercial port." (Instruction of Secretary of State Hay to Ambassador McCormick, Jan. 13, 1905. *United States Foreign Relations*, 1905, 747.)

In 1914 the Department of State instructed the Chargé d'Affaires in Russia to present a claim to the Russian Government for the loss due to the condemnation of part of the flour.

"... In the absence of information as to the consignees or of the transaction in which the flour here in question was involved, the master was not in a position to assert the fact of its private commercial destination. However, this does not in any way affect the views of this Government in relation to the case under discussion, namely, in the absence of consignment to enemy authorities or to an enemy contractor who as a matter of common knowledge supplied articles of this kind to the enemy, or to a fortified place of the enemy or to another place serving as a base for the armed forces of the enemy, the non-hostile destination of the flour was to be presumed, and therefore that the burden of proving the non-hostile destination of the flour was not cast upon the owners or their representatives, but that it was for the captors to prove its hostile destination." (The solicitor for the Department of State, Johnson, to the Chargé d'Affaires ad interim in Russia, Wilson, July 9, 1914; Hackworth, G. H., *Digest of International Law*, VII, 79.)

5. In a case involving an American shipping company which had canceled a contract for carrying flour to Japan because Russia had declared "provisions" to be contraband, the following opinion was expressed by an American court:

"Flour may probably be considered as a provision prepared for immediate use; but as to whether it was designed that the product in the present instance should go to a naval or military equipment station, there is no proof except that Japan was in a state of war. Ordinarily, therefore, the presumption would prevail that the flour was going to Japan for civil use, and would not be contraband except that it was declared to be so by one of the belligerents. Perhaps a mere declaration by a belligerent nation that articles of commerce are contraband, when by the rules of international law they are not, would not make them so. But here is a proclamation touching pro-

visions that rest upon the border line, and depend for their real character upon the particular state of the port of their destination, whether engaged in civil pursuits only, or in the equipping of either the army or the navy with war supplies. It would seem that, under such conditions, the proclamation of one of the governments at war would be effective to impress the provisions with the character of contraband. At any rate, I am inclined so to treat the flour concerned here." (*Balfour, Guthrie and Co. v. Portland and Asiatic S. S. Co.*, 167 Fed. 1010, 1015. (D. Oreg., 1909.)

6. In regard to contraband, Secretary of State Root charged the American delegates to the Hague Conference of 1907 as follows:

"... It is of the highest importance that not only the rights but the duties of neutrals shall be most clearly and distinctly defined and understood, not only because the evils which belligerent nations bring upon themselves ought not to be allowed to spread to their peaceful neighbors and inflict unnecessary injury upon the rest of mankind, but because misunderstandings regarding the rights and duties of neutrals constantly tend to involve them in controversy with one or the other belligerent.

"For both of these reasons, special consideration should be given to an agreement upon what shall be deemed to constitute contraband of war. There has been a recent tendency to extend widely the list of articles to be treated as contraband; and it is probable that if the belligerents themselves are to determine at the beginning of a war what shall be contraband, this tendency will continue until the list of contraband is made to include a large proportion of all the articles which are the subject of commerce, upon the ground that they will be useful to the enemy. When this result is reached, especially if the doctrine that free ships make free goods and the doctrine that blockades in order to be binding must be effective, as well as any rule giving immunity to the property of belligerents at sea, will be deprived of a large part of their effect, and we shall find ourselves going backward instead of forward in the effort to prevent every war from becoming universally disastrous. The exception of contraband of war in the Declaration of Paris will be so expanded as to very largely destroy the effect of the declaration. On the other hand, resistance to this tendency toward the expansion of the list of contraband ought not to be left to the neutrals affected by it at the very moment when war exists, because that is the process by which neutrals become themselves involved

in war. You should do all in your power to bring about an agreement upon what is to constitute contraband; and it is very desirable that the list should be limited as narrowly as possible." (Secretary of State Root to the Delegates of the United States to the Hague Conference of 1907, May 31, 1907; *United States Foreign Relations*, 1907, pt. 2, 1138.)

7. The Hague Conference of 1907 came to no agreement on this subject, but the Declaration of London in 1909 embodied many provisions for contraband. An elaborate attempt was made through the Declaration of London to list all articles entering into commerce in three categories: (1) absolute contraband, (2) conditional contraband, and (3) never contraband.

Article 22. "The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:

"(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

"(2) Projectiles, charges and cartridges of all kinds, and their distinctive component parts.

"(3) Power and explosives specially prepared for use in war.

"(4) Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

"(5) Clothing and equipment of a distinctively military character.

"(6) All kinds of harness of a distinctively military character.

"(7) Saddle, draught, and pack animals suitable for use in war.

"(8) Articles of camp equipment, and their distinctive component parts.

"(9) Armour plates.

"(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

"(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea."

ARTICLE 23. "Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

"Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers."

ARTICLE 24. "The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

"(1) Foodstuffs.

"(2) Forage and grain, suitable for feeding animals.

"(3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.

"(4) Gold and silver in coin or bullion; paper money.

"(5) Vehicles of all kinds available for use in war, and their component parts.

"(6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.

"(7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.

"(8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.

"(9) Fuel; lubricants.

"(10) Powder and explosives not specially prepared for use in war.

"(11) Barbed wire and implements for fixing and cutting the same.

"(12) Horseshoes and shoeing materials.

"(13) Harness and saddlery.

"(14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments."

ARTICLE 25. "Articles susceptible for use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23."

ARTICLE 26. "If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23."

ARTICLE 27. "Articles which are not susceptible of use in war may not be declared contraband of war."



ARTICLE 28. "The following may not be declared contraband of war:

"(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.

"(2) Oil seeds and nuts; copra.

"(3) Rubber, resins, gums, and lacs; hops.

"(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

"(6) Metallic ores.

"(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.

"(8) Chinaware and glass.

"(9) Paper and paper-making materials.

"(10) Soap, paint and colors, including articles exclusively used in their manufacture, and varnish.

"(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.

"(12) Agricultural, mining, textile, and printing machinery.

"(13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.

"(14) Clocks and watches, other than chronometers.

"(15) Fashion and fancy goods.

"(16) Feathers of all kinds, hairs, and bristles.

"(17) Articles of household furniture and decoration; office furniture and requisites."

ARTICLE 29. "Likewise the following may not be treated as contraband of war:

"(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

"(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage."

ARTICLE 30. "Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether carriage of the goods is direct or entails transshipment or a subsequent transport by land."

ARTICLE 31. "Proof of the destination specified in Article 30 is complete in the following cases:

"(1) When the goods are documented for discharge in an enemy

port, or for delivery to the armed forces of the enemy.

“(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.”

ARTICLE 32. “Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.”

ARTICLE 33. “Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).”

ARTICLE 34. “The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

“In cases where the above presumptions do not arise, the destination is presumed to be innocent.

“The presumptions set up by this Article may be rebutted.”

ARTICLE 35. “Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

“The ship’s papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.”

ARTICLE 36. “Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.”

ARTICLE 37. “A vessel carrying goods liable to capture as ab-



solute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination."

ARTICLE 38. "A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end."

ARTICLE 39. "Contraband goods are liable to condemnation."

ARTICLE 40. "A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo."

ARTICLE 41. "If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings."

ARTICLE 42. "Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation."

ARTICLE 43. "If a vessel is encountered at sea while unaware of the outbreak of hostilities or the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

"A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities."

ARTICLE 44. "A vessel which has been stopped on the ground that is she carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

"The delivery of the contraband must be entered by the captor

on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

“The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.” (Declaration of London, 1909. Not ratified. *Correspondence and Documents Respecting the International Naval Conference*, held in London, Dec. 1908—Feb. 1909, *Parliamentary Papers*, [Cd. 4554], Misc. No. 4 (1909), 78-84.)

8. In 1910 Russia, in answer to an American claim on behalf of the American owners of cargo of kerosene, seized and condemned by Russia during the Russo-Japanese War, declared:

“The Court of course could not but take note of the decisive circumstance in this instance that had the destination of the ‘Oldhamia’s’ cargo really been innocent and not destined for military purposes, the following characteristic facts, thoroughly verified in Court, certainly could not have occurred:

“(1) At the moment of her detention by the Russian cruiser the steamer ‘Oldhamia’ was proceeding *without lights*.

“(2) Upon detention of the vessel no *charter-party* was produced to the Russian naval authorities during the examination of the steamer and cargo.

“(3) The manifest stated that the vessel was to discharge at HongKong, whereas when detained she was proceeding *from HongKong in the direction of Japan*.

“(4) Similar *incorrect evidence* as to the course of the vessel to HongKong was given by the crew of the ‘Oldhamia’ during the examination.

“(5) Subsequently, upon searching the vessel, there was found correspondence addressed to the Captain of the ‘Oldhamia’ from which it was made clear that the cargo had been accepted by the steamer from the Standard Oil Company *especially for carriage to Japan*.

“These facts are of course of the first importance, and the conduct of the Captain and crew—especially as the question is one of ‘relative’ contraband, i. e., liable to confiscation only if destined for military purposes—proved in this instance the deciding factor in arriving at a conclusion respecting the hostile or harmless destination of the cargo. The Imperial Government therefore can in no way agree with the point of view of the note of July 10/23 declaring that ‘the character of the cargo itself is the sole essential question

here, and the conduct of the crew has no significance'. In contradistinction to cases of carriage of absolute contraband—where such argument (with certain reservations) generally speaking would be true—in cases of carriage of *relative* contraband, its character (i.e., the real distinction of the cargo) is often ascertained precisely from the conduct of the crew, and such facts as for instance the concealment of papers or the false evidence of the crew, from the point of view of modern international law, are unquestionably decisive in the sense of presumption of the military destination of the cargo, which is liable in such event to confiscation . . . " (*The Oldhamia*, 1910. Hackworth, G. H., *Digest of International Law*, VII, 65-6. See *Russian and Japanese Prize Cases*, I, 145.)

9. "It is not seen . . . that according to the Declaration of London, the misleading character of the ship's papers in this case and the action of the Captain and crew raised a presumption of hostile destination. They simply destroyed the value of the ship's papers as evidence of the destination, and apparently showed that the vessel was destined, generally, to Japan. Their destination in Japan is still presumed innocent, unless the consignment is addressed or destined, as set forth in Article 34, and it is not understood that there is any direct proof thereof in this case." (Memorandum of the Office of the Solicitor for the United States Department of State, Nov. 22, 1910 in regard to *The Oldhamia* and the Russian reply to the American claim. Hackworth, G. H., *Digest of International Law*, VII, 66.)

10. "In 1800 an American vessel carrying an American-owned cargo which included seven horses, bound to the British island of Antigua, was seized by a French privateer, and the vessel and cargo were condemned by a French prize court, *inter alia*, for carriage of contraband. The Court of Claims, passing on this as one of the French Spoliation Claims, upheld the findings of the French court the Antigua was a base of military and naval equipment. The court stated that whether horses were contraband depended on the probable use to be made of them at their destination and that such use was presumed to be hostile because of the character of the port." (*The Brig Rensalæer*, 1913. Commentary, Hackworth, G. H., *Digest of International Law*, VII, 70. See 49 *Court of Claims* 1.)

11. "An American brig sailed in 1797 from Baltimore bound for the Swedish island of St. Bartholomew, carrying a cargo of provisions. The vessel was shown to have the British island of Antigua as its real destination. It was seized on the high seas in the vicinity



of Antigua by a French privateer and condemned by a French prize court for carrying food assumed to be for the British Army at Antigua. The Court of Claims—passing on this as one of the French Spoliation Claims—held that the condemnation was illegal regardless of the treaty of 1778 between the United States and France. The court examined at some length the situation prevailing on the island at the time, including the fact that a food shortage existed, that slaves were greatly in the majority, and that troops were held there to guard against an uprising, and concluded that ‘All of the foregoing goes to negative any presumption that food-stuffs destined for the island of Antigua were for the supply of a few troops stationed there.’ ” *The Brig Sally*, 1915, Commentary, Hackworth, G. H., *Digest of International Law*, VII, 70. See 50 *Court of Claims* 129, 136.)

12. The following dispatch of October 19, 1911 shows that the Declaration of London of 1909 was operative during the Turco-Italian War in 1911–12:

“By a royal decree of October 13 the following instructions were approved in conformity with the principles of the Declaration of Paris, April 16, 1856, which belligerent countries are bound to respect, with the rules of The Hague Conventions of October 18, 1907, and of the Declaration of London of February 26, 1909, which the Government of the King desires to be respected as well, so far as the provisions of the laws in force in the Kingdom allow, although they have not yet been ratified by Italy; and they will serve to regulate the conduct of naval commanders in the operations of capture and prize during the war.” (United States Naval War College, *International Law Situations*, 1912, 108.)

## 6. *World War I.*

At the outbreak of World War I, most of the provisions of the Declaration of Paris and the unratified Declaration of London were followed by the warring nations in treating neutral and enemy commerce. As the war continued some of these provisions were retained, but most of them were altered as methods of warfare developed and conditions changed.

### (1) *Rules as of 1914.*

1. In 1914 the following propositions concerning contraband were generally accepted as law:

1. "Even enemy goods are safe on a neutral ship, *if* they are not contraband . . . ."

2. "Neutral goods are safe even on an enemy ship, *if* they are not contraband. . . ."

3. "*A fortiori*, neutral goods are safe on a neutral ship *but* only if they are not contraband . . . ."

4. "Contraband goods are divided into two categories: absolute and conditional."

5. "Absolute contraband consists of goods exclusively used for war and destined for an enemy country, even if passing through a neutral country en route; the rule of 'continuous voyage' applies."

6. "Conditional contraband consists of goods which may have a peaceful use but which are also susceptible of use in war and which are destined for the armed forces or a government department of a belligerent state; the rule of 'continuous voyage' does not apply."

(P. C. Jessup's preface to *Neutrality, Its History, Economics and Law*: vol. III, *The World War Period* (Turlington, 1936), x.)

2. "The sale or shipment of contraband of war by citizens of the United States to citizens or subjects of any of the belligerent powers, in course of commerce, is not prohibited by the neutrality laws or the President's proclamation. But contraband, whether shipped in vessels of the belligerents or neutrals, is subject to seizure and confiscation by the belligerents, and when so seized is not entitled to the protection or intervention of this Government."

"When absolute contraband *is destined to one of the countries at war, whether to the government or to an individual of that country*, it is subject to seizure and confiscation by any of the opposing belligerents when beyond the territory of the neutral government from which it is shipped."

"Vessels flying the flag of one of the belligerents are subject to seizure and confiscation by the opposing belligerents. Contraband of war on board of such vessel is, of course, subject to confiscation, though the property of a neutral.

"Goods, not contraband, belonging to a neutral aboard a captured vessel are subject to delay and interruption consequent upon the seizure of the vessel, but not to confiscation, upon manifestation of neutral ownership and the non-contraband character of the goods.

"When a vessel containing cargo of a citizen of the United States is captured and is carried before a prize court, as it will be presumably, he should give notice of his claim of property to the prize-court authorities and be prepared to furnish proof of his ownership and the non-contraband character of his goods.



"Goods of a neutral, not contraband of war, shipped on a neutral vessel are not rightfully subject to seizure or confiscation by any of the belligerents, and it is not presumed that the vessels of neutrals carrying only non-contraband cargoes will be interfered with."

Contraband of war "is ranked under two heads, namely, absolute and conditional." Absolute contraband "includes those articles which are peculiarly adapted to war, such as arms and ammunition and military and naval equipment." Conditional contraband "consists, generally speaking, of articles which are susceptible of use in war as well as for purposes of peace," and, therefore, "their destination determines whether they are contraband or non-contraband." (Public circular issued by the Department of State, Aug. 15, 1914; *United States Foreign Relations*, 1914, *Supplement*, 274-7.)

3. "His Majesty's Government cordially concur in the principle enunciated by the Government of the United States that a belligerent, in dealing with trade between neutrals, would not interfere unless such interference is necessary to protect the belligerent's national safety, and then only to the extent to which this is necessary. We shall endeavor to keep our action within the limits of this principle on the understanding that it admits our right to interfere when such interference is not with *bona fide* trade between the United States and another neutral country, but with trade in contraband destined for the enemy's country, and we are ready, whenever our action may unintentionally exceed this principle, to make redress." (British Foreign Office reply to American note. Ambassador Page to Secretary of State Bryan, telegram, Jan. 7, 1915; *United States Foreign Relations*, 1915, *Supplement*, 299-300.)

### *Changes in Contraband Lists.*

The government of the United States attempted to gain in the early days of the war a general agreement to the Declaration of London from all belligerents. The belligerents, however, declared it necessary to transfer certain goods, aircraft for example, from the conditional to the absolute list. Such transfers were even allowed under the terms of the unratified Declaration of London. Although there was much interchange of opinion between the belligerents and neutrals in regard to contraband, no general agreement

was ever reached. As the war continued, the belligerents surpassed each other in going beyond the ordinary bounds of international law, using retaliation in self-defense as a justification for avoiding its obligations under international law. The generally weaker neutral nations had to submit to these actions. In the case of contraband lists, the lists remained, but as goods were rapidly shifted from the free to the conditional and then to the absolute list, the distinction between absolute and conditional disappeared. By the end of the war, all contraband was absolute contraband, for with total warfare it was soon presumed that all goods even food stuffs, were destined to the enemy government.

1. "On August 6, 1914, the American Secretary of State addressed to the American Ambassadors in the belligerent states and the Minister to Belgium an inquiry as to whether the respective states were 'willing to agree that the laws of naval warfare laid down by the Declaration of London, 1909, shall be applicable to naval warfare during the present European conflict, provided that the governments with whom' they were or might be at war also agree to such application. The Secretary also said, 'You will further state that this Government believes that acceptance of these laws by the belligerents would prevent grave misunderstandings which may arise as to the relations between belligerent and neutral powers. It, therefore, earnestly hopes that this inquiry may receive favorable consideration.' " (United States Naval War College, *International Law Situations*, 1933, 10; *United States Foreign Relations*, 1914, *Supplement*, 216.)

2. "The British Government had on August 5, 1914, made known that it would regard as contraband the articles named as absolute and conditional contraband in the Declaration of London with the transfer of aircraft from the conditional to the absolute list." (United States Naval War College, *International Law Situations*, 1933, 10; *United States Foreign Relations*, 1914, *Supplement*, 215-6.)

3. For British lists and changes therein, see *United States Foreign Relations*, 1914, *Supplement*, 215-216, 236, 245, 261-262, 269-270; *United States Foreign*

*Relations*, 1915, *Supplement*, 137, 160, 165, 174-177; *United States Foreign Relations*, 1916, *Supplement*, 385-387, 405, 453, 486; *United States Foreign Relations*, 1917, *Supplement I*, 492; *United States Foreign Relations*, 1918, *Supplement I*, 917-918.

French contraband lists conformed to the British.

4. At the beginning of the war, the German and Austro-Hungarian Governments announced that their lists of contraband would conform to those in the Declaration of London. For these lists and later changes, see *United States Foreign Relations*, 1914, *Supplement*, 216, 222, 266; *United States Foreign Relations*, 1915, *Supplement*, 162-163, 607; *United States Foreign Relations*, 1916, *Supplement*, 281.

5. Japan also announced a list which conformed to the Declaration of London except for the inclusion of aircraft as absolute contraband. See *United States Foreign Relations*, 1914, *Supplement*, 179; United States Naval War College, *International Law Documents*, 1925, 146, 152.

6. " . . . The United States stands ready either to accept the declaration as a whole, provided all of the belligerents accept it, or, to accept it for the period of the war with modifications and additions acceptable, on the one hand, to the United States and the Netherlands, the two neutral signatories, and, on the other hand, to all of the belligerents.

"This Government in seeking general acceptance of the declaration as a code of naval warfare for the present war had in mind the adoption of the declaration as a whole and not such part of it as might be acceptable to certain belligerents and not to other belligerents. It considered that the declaration was to be applied as a complete code of which no rule could be ignored or supplemented, and in so doing it followed Article 65 of the declaration, which stipulates: 'The provisions of the present declaration must be treated as a whole and cannot be separated.'

"The only reasonable explanation for the inclusion in the declaration of this requirement is that the instrument is composed largely of compromises on the part of the government represented at the conference. Although the declaration is introduced with a general



statement that 'the signatory powers are agreed' that the rules contained in the declaration 'correspond in substance with the generally recognized principles of international law,' the proceedings of the conference as well as the documents relating to it prove that an agreement on many of the articles was reached through reciprocal concessions. Being conceived in compromise and concession the declaration was accepted by the Government of the United States at the conference in London in the earnest hope that it might finally compose the differences which existed as to neutral rights and neutral duties, although in so accepting this Government was compelled to abandon certain rules of conduct which it has heretofore always maintained.

7. "As might be expected in a settlement of divergent views and practices by mutual concession the Declaration of London contains provisions both advantageous and disadvantageous to the respective interests of neutrals and belligerents. But it is now proposed by Great Britain to retain all the provisions favorable to belligerents and to recast other provisions so that they will be less favorable to neutral interests. The result is a set of rules which limits neutrals' rights far more than does the declaration itself treated as a whole. War, in any event, bears heavily upon a neutral nation. The interruption of its commerce and the limitations placed upon its trade are sufficiently burdensome under the rules of the Declaration of London. In consenting to those rules the Government of the United States made great concessions on its part and it does not feel that it can, in justice to its own people, go further. It cannot consent to the retention of a part of this compromise settlement and to the rejection of another part. The adoption of the declaration so modified is contrary to the customary procedure incident to compromise settlements, to the express provisions of the declaration itself, and to the spirit which induced its signature." (Acting Secretary of State, Sept. 26, 1914. (*United States Foreign Relations*, 1914, *Supplement*, 227. United States Naval War College, *International Law Situations*, 1933, 11-12.)

8. "A discussion of the provisions of the order in council followed in which the Ambassador said that he agreed that the Order in Council practically made foodstuffs absolute contraband, which was contrary to the British traditional policy as well as to that of the United States. He said that the immediate cause had been the introduction through Rotterdam in first days of the war of large quantities of food supplies for the German army in Belgium, and that it seemed absolutely necessary to stop this traffic.



"I replied that, while I appreciated that such reasons must weigh very heavily with those responsible for the successful conduct of the war, it seemed unfortunate that some other means could not have been found to accomplish the desired purpose, either by getting the Netherlands to place an embargo on foodstuffs and other conditional contraband or by agreeing not to export such articles. The Ambassador said that he agreed that would be much the better way, and that he believed it could be done.

"He said that now the chief anxiety to be in regard to shipments of copper and petroleum and also of Swedish iron, and that the British Government was stopping vessels with such cargoes and purchasing them. He suggested that possibly the difficulty created by the Order in Council could be removed by rescinding it and adding to the list of absolute contraband petroleum products, copper, barbed wire and other articles of like nature now used almost exclusively for war purposes.

"I said that as to this suggestion I could not speak for the Government but that it seemed worthy of consideration as it might offer a means of getting rid of the order in council which certainly menaced the very friendly relations existing if it became the subject of discussion by the press. I told him that I did not think that the feeling which the Order in Council would arouse when generally understood, would be among the shippers as much as among the American public at large; and that, even if no case arose under it, the fact that the British Government had issued a decree, which menaced the commercial rights of the United States as a neutral, in violation of the generally accepted rules of international law, would undoubtedly cause irritation, if not indignation, and might change the sentiment of the American people, of which Great Britain had no reason to complain at the present time." (A memorandum of a conference of Acting Secretary Lansing with the British Ambassador on September 29, 1914. *United States Foreign Relations*, 1914, *Supplement*, 234. United States Naval War College, *International Law Situations*, 1933, 12-13.)

9. "The desire of this Government is to obtain from the British Government the issuance of an Order in Council adopting the declaration without any amendment whatsoever and to obtain from France and Russia like decrees, which they will undoubtedly issue if Great Britain sets the example. Such an adoption by the allied Governments will put in force the acceptance of the Declaration of London by Germany and Austria, which will thus become for

all the belligerent powers the code of naval warfare during the present conflict. This is the aim of the United States.

"It cannot be accomplished if the declaration is changed in any way as Germany and Austria would not give their consent to a change.

"In the frequent informal and confidential conversations which have taken place here and in the admirable frankness with which Sir Edward Grey has stated the reasons for the action which Great Britain has deemed it necessary to take in regard to the declaration, this Government feels that it fully understands and appreciates the British position, and is not disposed to place obstacles in the way of the accomplishment of the purposes which the British representatives have so frankly stated.

"The confidence thus reported in this Government makes it appreciate more than ever the staunch friendship of Great Britain for the United States, which it hopes always to deserve.

"This Government would not feel warranted in offering any suggestion to the British Government as to a course which would meet the wishes of this Government and at the same time accomplish the ends which Great Britain seeks, but you might in the strictest confidence intimate to Sir Edward Grey the following plan, at the same time stating very explicitly that it is your personal suggestion and not one for which your Government is responsible.

"Let the British Government issue an Order in Council accepting the Declaration of London without change or addition, and repealing all previous conflicting orders in council.

"Let this Order in Council be followed by a proclamation adding articles to the lists of absolute and conditional contraband by virtue of the authority conferred by Articles 23 and 25 of the declaration.

"Let the proclamation be followed by another Order in Council, of which the United States need not be previously advised, declaring that, when one of His Majesty's Principal Secretaries of State is convinced that a port or the territory of a neutral country is being used as a base for the transit of supplies for an enemy government a proclamation shall issue declaring that such port or territory has acquired enemy character in so far as trade in contraband is concerned and that vessels trading therewith shall be thereafter subject to the rules of the declaration governing trade to enemy's territory.

"It is true that the latter Order in Council would be based on a new principle. The excuse would be that the Declaration of London failing to provide for such an exceptional condition as exists, a belligerent has a right to give a reasonable interpretation to the rules

of the declaration so that they will not leave him helpless to prevent an enemy from obtaining supplies for his military forces although the belligerent may possess the power and would have the right to do so if the port or territory was occupied by the enemy.

"When the last-mentioned Order in Council is issued, I am convinced that a full explanation of its nature and necessity would meet the liberal consideration by this Government and not be the subject of serious objection.

"I repeat that any suggestion, which you may make to Sir Edward Grey, must be done in an entirely personal way and with the distinct understanding that this Government is in no way responsible for what you may say." (Telegram from the Department of State to the American Ambassador in Great Britain, October 16, 1914. *United States Foreign Relations, 1914, Supplement*, 249. United States Naval War College, *International Law Situations*, 1933, 14-16.)

10. "The question seems wholly different here from what is probably seems in Washington. There it is a more or less academic discussion. Here it is a matter of life and death for English-speaking civilization. It is not a happy time to raise controversies that can be avoided or postponed. Nothing can be gained and every chance for useful cooperation for peace can easily be thrown a way and is now in jeopardy. In jeopardy also are our friendly relations with Great Britain in the sorest time of need in her history. I know that this is the correct, larger view." (Telegram from the American Ambassador in Great Britain to the Department of State. *United States Foreign Relations, 1914, Supplement*, 248. United States Naval War College, *International Law Situations*, 1933, 16.)

"Beg that you will not regard the position of this Government as merely academic. Contact with opinion on this side the water would materially alter your view. Lansing has pointed out to you in personal confidential despatch of this date how completely all the British Government seeks can be accomplished without the least friction with this Government and without touching opinion on this side the water on an exceedingly tender spot. I must urge you to realize this aspect of the matter and to use your utmost persuasive efforts to effect an understanding, which we earnestly desire, by the method we have gone out of our way to suggest, which will put the whole case in unimpeachable form.

"This is private end for your guidance."

"Woodrow Wilson"



(President of the United States to the American Ambassador in Great Britain. *United States Foreign Relations*, 1914, *Supplement*, 252. United States Naval War College, *International Law Situations*, 1933, 16.)

12. "There is no Hague convention which deals with absolute or conditional contraband, and, as the Declaration of London is not in force, the rules of international law only apply. As to the articles to be regarded as contraband, there is no general agreement between nations. It is the practice for a country, either in time of peace or after the outbreak of war, to declare the articles which it will consider as absolute or conditional contraband. It is true that a neutral government is seriously affected by this declaration, as the rights of its subjects of citizens may be impaired. But the rights and interests of belligerents and neutrals are opposed in respect to contraband articles and trade and there is no tribunal to which questions of difference may be readily submitted.

"The record of the United States in the past is not free from criticism. When neutral, this Government has stood for a restricted list of absolute and conditional contraband. As a belligerent, we have contended for a liberal list, according to our conception of the necessities of the case. (Secretary of State Bryan to Senator Stone, January 20, 1915. *United States Foreign Relations*, 1914, *Supplement*, ix.)

13. "Petrol and other petroleum products have been proclaimed by Great Britain as contraband of war. In view of the absolute necessity of such products to the use of submarines, aeroplanes, and motors, the United States Government has not yet reached the conclusion that they are improperly included in a list of contraband. Military operations to-day are largely a question of motive power through mechanical devices. It is therefore difficult to argue successfully against the inclusion of petroleum among the articles of contraband . . . ."

"Great Britain and France have placed rubber on the absolute contraband list and leather on the conditional contraband list. Rubber is extensively used in the manufacture and operation of motors and, like petrol, is regarded by some authorities as essential to motive power to-day. Leather is even more widely used in cavalry and infantry equipment. It is understood that both rubber and leather, together with wool, have been embargoed by most of the belligerent countries. It will be recalled that the United States has in the past exercised the right of embargo upon exports of any commodity which might aid the enemy's cause." (Secretary of State Bryan to



Senator Stone, Jan. 20, 1915. *United States Foreign Relations, 1914, Supplement, x.*)

14. "I note your excellency's statement that in taking the measure of placing resinous products and turpentine on the list of contraband, His Britannic Majesty's Government followed the usage of all maritime nations, and notably that of the United States, when at war, who have invariably claimed and exercised the right of making additions from time to time to their lists of contraband—a right explicitly conferred in the Declaration of London.

"I do not for a moment suppose that by this statement your excellency intends to advance the principle that belligerents have the right to add at their pleasure to the list of contraband without reference to the character of the article involved, for in that case I would be compelled to question the principle." (Secretary of State Bryan to the British Ambassador to the United States, Spring-Rice, January 13, 1915. *United States Foreign Relations, 1915, Supplement, 306-7.*)

15. The spirit of retaliation between the belligerents which made all neutral protests futile is illustrated by the German War Zone proclamation of February 4, 1915, which stated that the waters surrounding Great Britain and Ireland were to be considered as "within the seat of war and that all enemy merchant vessels found in those waters after the eighteenth instant will be destroyed although it may not always be possible to save crews and passengers.

"Neutral vessels expose themselves to danger within this zone of war since in view of the misuse of the neutral flag ordered by the British Government on January thirty-first and of the contingencies of maritime warfare it cannot always be avoided that neutral vessels suffer from attacks intended to strike enemy ships." (*United States Foreign Relations, 1915, Supplement, 94.* United States Naval War College, *International Law Situations, 1933, 17.*)

16. "Unofficial critics praise the courtesy and admit the propriety of our communications, but they regard them as remote and impracticable. They point out that we have not carried our points: namely, that copper should not be contraband, that ships should be searched at sea, that to-order cargoes should be valid, that our export trade had fallen off because of the war. They point out these in good-natured criticism as evidence of the American love of protest for political effect at home. While the official reception of our communications is dignified, the unofficial and general attitude to them is a smile at our love of letter writing as at Fourth of July orations. They quietly laugh at our effort to regulate sea warfare

under new conditions by what they regard as lawyers' disquisitions out of textbooks. They [receive] them with courtesy, pay no further attention to them, proceed to settle our shipping disputes with an effort at generosity and quadruple their orders from us of war materials. They care nothing for our definitions or general protests but are willing to do us every practical favor and will under no conditions either take our advice or offend us. They regard our writings as addressed either to complaining shippers or to politicians at home.

"For these reasons complaints about concrete cases as they arise are more effective than general communications about rules of sea warfare, which must be revised by the submarine, the aeroplane, the mine and our own precedents." (Telegrams from the American ambassador in Great Britain to the Secretary of State, May 21, 1915. *United States Foreign Relations, 1915, Supplement*, 147. United States Naval War College, *International Law Situations*, 1933, 17-18.)

17. "The most difficult questions in connection with conditional contraband arise with reference to the shipment of foodstuffs. No country has maintained more stoutly than Great Britain in modern times the principle that a belligerent should abstain from interference with the foodstuffs intended for the civil population. The circumstances of the present struggle are causing His Majesty's Government some anxiety as to whether the existing rules with regard to conditional contraband, framed as they were with the object of protecting so far as possible the supplies which were intended for the civil population are effective for the purpose, or suitable to the conditions present. The principle which I have indicated above is one which His Majesty's Government have constantly had to uphold against the opposition of continental powers. In the absence of some certainty that the rule would be respected by both parties to this conflict, we feel great doubt whether it should be regarded as an established principle of international law. . . ."

"The reason for drawing a distinction between foodstuffs intended for the civil population and those for the armed forces or enemy Government disappears when the distinction between the civil population and the armed forces itself disappears.

"In any country in which there exists such tremendous organization for war as now obtains in Germany there is no clear diversion [division] between those whom the Government is responsible for feeding and those whom it is not. Experience shows that the power

to requisition will be used to the fullest extent in order to make sure that the wants of the military are supplied, and however much goods may be imported for civil use it is by the military that they will be consumed if military exigencies require it, especially now that the German Government have taken control of all the food-stuffs in the country. (Note from the British Foreign Secretary to the American Ambassador, Feb. 12, 1915. *United States Foreign Relations*, 1915, *Supplement*, 332. United States Naval War College, *International Law Situations*, 1933, 18-19.)

"In Department's consideration of destination of conditional contraband, it is necessary to ascertain to what extent the military authorities have superseded civil authorities in the Government of Germany so far as control over imports are concerned, and to what extent the Government controls the use of articles on contraband list of Great Britain and her allies. Are private consignees free to import such articles without interference by authorities?" (An inquiry by the United States Department of State in regard to the control of German resources and imports by the German Government, October 28, 1915. *United States Foreign Relations*, 1915, *Supplement*, 603. United States Naval War College, *International Law Situations*, 1933, 19.)

19. "Following information communicated verbally by [German] Foreign Office; written answer promised:

"(1) Owing to proclamation issued at outbreak of war, military authorities theoretically have power to supersede civil authorities, but, practically, power has been exercised in only few instances and not at all in connection with customs authorities.

"(2) In so far as control of use of imported goods is concerned, Government regards enemy's list of conditional contraband as of no importance.

"(3) Receipt and distribution of certain imported food and fodder products may take place only through central organization which distributes to civil parties only, but military authorities have power to requisition against payment anything needed by army or navy.

"(4) Chancellor has power to grant exemption from control and distribution and military authorities have power to guarantee in advance freedom from requisition of designated imported consignments in whole or part." (Reply to the United States Department of State by the American Embassy in Berlin, December 4, 1915. *United States Foreign Relations*, 1915, *Supplement*, 622. United



States Naval War College, *International Law Situations*, 1933, 19–20.)

20. “. . . The circumstances of the present war are so peculiar that His Majesty’s Government consider that for practical purposes the distinction between the two classes of contraband has ceased to have any value. So large a proportion of the inhabitants of the enemy country are taking part, directly or indirectly, in the war that no real distinction can now be drawn between the armed forces and the civilian population. Similarly, the enemy Government has taken control, by a series of decrees and orders, of practically all the articles in the list of conditional contraband, so that they are now available for Government use. So long as these exceptional conditions continue our belligerent rights with respect to the two kinds of contraband are the same, and our treatment of them must be identical.” (Explanation of the British Government after notification of a revised contraband list. Vice Consul in London to Secretary of State Lansing, April 20, 1916 (enclosure). *United States Foreign Relations*, 1916, *Supplement*, 385.)

21. “Sir: With reference to the announcement made by the British Foreign Office, under date of April 13, 1916, of the intention of the British Government to treat alike absolute and conditional contraband, you are instructed to communicate to the Foreign Office a formal reservation, in regard to this announcement, in the sense that, in view of the established practice of a number of maritime nations, including Great Britain and the United States, of distinguishing between absolute and conditional contraband, the Government of the United States is impelled to notify the British Government of the reservation of all rights of the United States or its citizens in respect of any American interests which may be adversely affected by the abolition of the distinction between these two classes of contraband, or by the illegal extension of the contraband lists during the present war by Great Britain and her allies.” (Instructions from Secretary of State Lansing to Ambassador Page in Great Britain, Nov. 11, 1916. *United States Foreign Relations*, 1916, *Supplement*, 483. United States Naval War College, *International Law Situations*, 1933, 20.)

22. “In modern times the two chief points of controversy have related to the carriage of contraband and the trading through blockaded ports.” “. . . I only wish to note and extract the principle upon which they are based. Broadly, the principle is that the maritime commerce of neutrals is subject to restriction by the acts of States at war, if that commerce tends to assist an enemy either directly in



his warlike operations, or indirectly in the carrying on of his own trade upon which his power of continuing the war may largely, or even entirely, depend. The object, and the enemy's commerce. The result, and the inevitable result, to neutrals is interference with their trade."

"In the application of the principle, the boundary of the law of nations has been extended from time to time to adapt itself to new and ever-changing conditions. This law must from its nature have room for expansion. It cannot and never could be squeezed into a mould of a particular size or shape. It never had or could have the quality of immutability attributed to the laws of the Medes and Persians. It could not be confined within artificial limits like an Act of Parliament. It has the essence and qualities of a living organism like the common law of this realm."

"In the two branches already mentioned, namely, contraband and blockade, this natural development is clearly illustrated. Contraband goods were at one time comprised within a very limited catalogue. At the present day, the list is extensively enlarged. The result to neutrals has been that their trade in such goods has to run greater and increasing risks and penalties. Moreover, in recent times not only have the contraband goods themselves been subject to confiscation, but the neutral vessels which carry them have also been rendered confiscable in many cases. It has become established law, too, that other goods on the same vessel belonging to the same neutral character or enemy destination. It may be added, also, that the application of the doctrine of continuous voyage to contraband trade has greatly encroached upon and fettered the trade of neutrals in time of war. This doctrine was originated in connection with the so-called 'Rule of 1756,' but since its extension to trade in contraband goods by the Courts of North American States at the time of the Civil War it has become established as part of the law of nations." (Sir Samuel Evans, February 16, 1917, supporting the Retaliatory Order in Council in *The Leonora and Other Vessels* (1918), a British case. VII *Lloyds Prize Cases*, 262, 300.

23. The United States Naval Instructions of 1917 retained, in name if not in reality, the distinction between absolute and conditional contraband even though it was out of step with the practice of the time.

23. "In the absence of notice of change which the Government of the United States may make at the outbreak of or during war, the

following classification and enumeration of contraband will govern commanders of ships of war."

24. "The articles and materials mentioned in the following paragraphs (a), (b), (c), and (d), actually destined to territory belonging to or occupied by the enemy or to armed forces of the enemy, and the articles and materials mentioned in the following paragraph (e) actually destined for the use of the enemy Government or its armed forces, are, unless exempted by treaty, regarded as contraband."

"(a) All kinds of arms, guns, ammunition, explosives, and machines for their manufacture or repair; component parts thereof; materials or ingredients used in their manufacture; articles necessary or convenient for their use."

"(b) All contrivances for or means of transportation on land, in the water or air, and machines used in their manufacture or repair; component parts thereof; materials or ingredients used in their manufacture; instruments, articles or animals necessary or convenient for their use."

"(c) All means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines, or documents necessary or convenient for carrying on hostile operations."

"(d) Coin, bullion, currency, evidences of debt; also metal, materials, dies, plates, machinery or other articles necessary or convenient for their manufacture."

"(e) All kinds of fuel, food, foodstuffs, feed, forage, and clothing and articles and materials used in their manufacture."

25. "Articles and materials even though enumerated in paragraph 24, if exempted, by special treaty provisions, are not regarded as contraband."

59. "The neutral or enemy character of merchandise found on board an enemy private vessel is determined by the neutral or enemy commercial domicile of the owner, whether the owner be an individual, a firm, or a corporation. In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods."

67. "The neutral flag covers enemy goods with the exception of contraband of war." (Declaration of Paris, 1856, art. 2.)

68. "Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag." (Declaration of Paris, 1856, art. 3.)

69. "Contraband, in paragraph 24 (a), (b), (c), and (d), is

liable to capture if its actual destination is the territory belonging to or occupied by the enemy, or the armed forces of the enemy. It is immaterial whether the carriage of the contraband to such actual destination be direct in the original vessel or involve trans-shipment or transport overland."

70. "Contraband, in paragraph 24 (e), is liable to capture if it is actually destined for the use of the enemy government or its armed forces. It is immaterial whether the carriage of contraband be direct in the original vessel, or involves trans-shipment or transport overland."

71. "A destination for the use of the enemy government or its armed forces referred to in paragraph 70 is presumed to exist if the contraband is consigned—

"(a) To enemy authorities.

"(b) To a part of equipment or supply of the armed forces of the enemy or other place serving as a base for such armed forces.

"(c) To a contractor or agent in enemy territory who, by common knowledge, supplies articles of the kind in question to the enemy authorities."

72. "A destination to territory belonging to or occupied by the enemy or to the armed forces of the enemy, referred to in paragraph 69, is presumed to exist if the contraband is consigned 'to order,' 'to order or assigns,' or with an unnamed consignee, but in any case going to territory belonging to or occupied by the enemy, or to neutral territory in the vicinity thereof." (*Instructions for the Navy of the United States Governing Maritime Warfare*, June, 1917, 15, 24, 27-28.)

24. "When Great Britain inquired in April of 1918 whether the United States would concur in the addition to the British list of absolute contraband of (1) willows and osiers; (2) sodium fluoride; (3) tin waste; (4) tin and lead and their alloys, salts, compounds, and ores; and (5) wire steel and iron, the Navy Department, to which the inquiry was referred, replied that the American contraband list already was broad enough to embrace these items, since willows and osiers could be used in the manufacture of aircraft parts, sodium fluoride was involved in the production of aluminum which was used in the manufacture of aircraft and of munitions, and the remaining items were all 'employed or capable of being employed' in the manufacture of munitions. The British Ambassador was informed that these items were included in the list issued by the United States in June 1917. When the British Government later inquired concerning the addition of citric acid and citrates



to the list of British absolute contraband, the State Department replied that these products were regarded as included within the American contraband list of June 1917, since citric acid was the active principle of lime juice, which was included in the naval ration of some governments, and since citrates were drugs or medicines useful to the armed forces as well as to the general population." (The Acting Secretary of State Phillips to the Secretary of the Navy Daniels, June 4, 1918; Daniels to Secretary of State Lansing, June 18, 1918; Acting Secretary of State Polk to the British Ambassador on Special Mission Reading, July 10 and July 18, 1918. Comment in Hackworth, G. H., *Digest of International Law*, VII, 23-4. *United States Foreign Relations*, 1918, *Supplement*, vol. II, 917-22.)

25. "Immediately on the outbreak of war an Examination Service was established at Kirkwall, the Downs, Port Said, and Gibraltar, and the North Sea between the Orkneys and Norway was patrolled. Merchant vessels were brought into port and examined there, for boarding and search at sea were rendered dangerous by submarines, and officers afloat could not be kept adequately informed of the intricate developments in policy. The Examining Officers in the ports acted under direct, and constantly more stringent, orders from London as to the vessels and cargoes which they were to seize or release. In London the work of translating the developing policy into detailed rules and orders were undertaken by a Contraband Committee representing the Admiralty and the Foreign Office."

"Naval seizure and search was, however, only one, and in time perhaps not the most important instrument, of the blockade. Throughout the war the Foreign Office were supplementing it by elaborate and very effective agreements with neutral countries, by which, in return for permission to import themselves, they undertook to control export to Germany. There was throughout competitive pressure on the contiguous northern neutrals by Germany, who could threaten to invade them, and by the Allies who could withhold many vital supplies. In this competition the balance inclined gradually on the side of the Allies, and the Allied agreements became more and more complete. It was nearly a year, however, before the blockade became really effective. In the early months supplies of all kinds, except finished munitions, flowed abundantly into Germany. Merchants had learnt how to send 'conditional contraband' through the contiguous neutrals. The diplomatic position, both with these neutrals and America, was



making more drastic action difficult; but it was evident that without it the blockade might almost as well be abandoned."

"Germany's declaration, however, that after February 1915 she would instruct her submarines to attack all merchant vessels in British waters, created an outburst of indignation in neutral countries, which Great Britain at once used to make the blockade comprehensive. In the Reprisals Order of March 11, 1915, she announced her intention to stop all goods of enemy origin or destination, and proceeded henceforth to stop supplies intended for Germany, without regard to the destination of the earlier contraband rules or to the fact that the supplies might be consigned through a neutral port. Even this, however, was not enough. It was useless to prohibit every cargo of food destined for Germany, whether sent through contiguous neutral countries or not, if these neutral countries could themselves import freely for their own uses, and with the sufficiency so obtained, export their own produce to Germany by routes which the Allies could not control. This was the reason for the 'rationing' policy, which was begun in 1915, and subsequently became the central feature in the whole blockade system. Detailed statistics were compiled as to the pre-war imports and consumption of all the neutral countries which had uncontrolled access to Germany; and only enough war imports were allowed to give a bare sufficiency for internal consumption. The neutral countries were therefore compelled to adopt internal rationing measures, so that the system of official control extended over almost the whole world—neutral and belligerent alike." (Salter, J. A., *Allied Shipping Control*, (Oxford, 1921), 99–100. Sir Arthur Slater was Secretary to the Allied Maritime Transport Council and Chairman of the Allied Maritime Transport Executive during World War I.)

26. "As was shown in the World War, it is difficult and at times impossible to distinguish between absolute and conditional contraband. By nature, some goods may equally serve the combatant and noncombatant population. If a consignment of goods is unquestionably for the civil population in a given area, these goods may in fact make it possible to send to the forces other goods which would have been essential in that area without the consignment and it has been held that it thus makes little difference which goods go to the forces as the result is the same. The means of transportation and methods of warfare have so far changed that nearly all parts of a state may serve its forces and nearly all goods may be of use for the forces. Indeed in the World War German courts seemed to

regard all ports of England as ports which could be considered bases and the British seemed to regard practically all goods as of military use.

"The distinctions between absolute and conditional contraband came to have little significance and to be little applied in practice. During the World War most states participating in the conflict formally abolished or tacitly disregard the distinction."

"Contraband consists of articles which a neutral may not furnish to one belligerent without risk of capture by the other belligerent. The essential items for consideration would be the nature of the article and the destination.

"Goods of the nature of contraband of which capture might be justified would be such as would aid the belligerent in the conduct of the war. In early days when the conduct of the war depended almost wholly upon supplying the enrolled armed forces with the simple implements of war, lists were comparatively easy to draw up and did not vary greatly from year to year. Pitch-balls and javelins might be included in a contraband list, as in the treaties with Sweden, 1783, and some other early treaties of the United States, but cotton and oil and many other articles were definitely excluded from the list, and it was provided they 'shall not by any pretended interpretation be comprehended among prohibited or contraband goods' unless bound to places 'besieged, blocked, or invested' so as to be 'nearly surrounded by one of the belligerent powers.' "

"The intention of such agreements was to confine the list of contraband to such articles as were actually for war use. Manifestly therefore for all contraband articles the destination was a matter of equal importance with the nature of the article itself, for if the article whatever its nature, was not destined for war use it would not be liable as contraband. Speaking of articles of ordinary use such as provisions, Mr. Justice Story in the case of the *Commercen*, 1816, said, "if destined for the army or navy of the enemy, or for his ports of naval or military equipment, they are deemed contraband.' (1 Wheat. 387.)"

"The attitude of leading states has varied in regard to what articles and when articles might be treated as conditional contraband. Even during the World War there were many conflicting opinions."

"If a state mobilizes its whole population and all its resources for war, evidently it will be difficult if not impossible to distinguish among consignments destined for that state, and anything bound for the state, unless exempted on humanitarian grounds, may be liable to capture as contraband. The grounds of humanity would exempt

articles whose sole use would be for medicinal and surgical purposes and articles necessary for Red Cross operations."

"The changing use and impossibility of determining what may be of use in war from day to day and the possibility of mobilization of population would therefore justify the declaration that the distinction between absolute and conditional contraband is abolished."

"All goods other than those solely for humanitarian and Red Cross use might be declared contraband." (United States Naval War College, *International Law Situations*, 1933, 25-8.)

### *Continuous Voyage and Contraband.*

The problem of determining destination in itself, of goods increased in importance as the distinction between absolute and conditional contraband diminished and the contraband list grew longer, for in total warfare goods consigned to a neutral country but with an enemy country as the ultimate or probably ultimate destination, could not be tolerated by any belligerent. As a result of these trends, the doctrine of continuous voyage, previously applicable to only a share of the goods, now became applicable to most goods, all contraband.

1. "(5) Notwithstanding the provisions of Article 35 of the said declaration [of London], conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture, to whatever port the vessel is bound and at whatever port the cargo is to be discharged." (British Order in Council, Aug. 20, 1914. *United States Foreign Relations*, 1914, *Supplement* 220).

2. For French and Russian decrees corresponding to the British Order in Council, see *United States Foreign Relations*, 1914, *Supplement*, 222, or the *American Journal of International Law*, Vol. 9, *Special Supplement*, (July 1915) 31-3.

3. "... it is manifest that this article nullifies the words 'and when it is not to be discharged in an intervening neutral port' which appear in Article 35 of the Declaration of London. This then is a reversion to the doctrine of continuous voyage in the matter of conditional contraband, which was abandoned by the London conference according to the official report of the drafting committee."

"This Government, therefore, feels compelled to state that Articles 3 and 5 of the Order in Council are inadmissible in them-



selves, and that the purpose for which they have apparently been devised, as explained by the memorandum of the Foreign Office, namely, to intercept neutral commerce on its way to a neutral nation, is, in the opinion of this Government, equally inadmissible." (Acting Secretary of State Lansing to Ambassador Page, Sept. 26, 1914. *United States Foreign Relations, 1914, Supplement*, 229-230).

4. "1. During the present hostilities the provisions of the convention known as the Declaration of London shall, subject to the exclusion of the lists of contraband and non-contraband, and to the modifications hereinafter set out, be adopted and put in force by His Majesty's Government.

"The modifications are as follows:

"(i) A neutral vessel, with papers indicating a neutral destination, which, notwithstanding the destination shown on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage."

"(iii) Notwithstanding the provisions of Article 35 of the said declaration, conditional contraband shall be liable to capture on board a vessel bound for a neutral port if the goods are consigned 'to order,' or if the ship's papers do not show who is the consignee of the goods, or if they show a consignee of the goods in territory belonging to or occupied by the enemy."

"(iv) In the cases covered by the preceding paragraph (iii) it shall lie upon the owners of the goods to prove that their destination was innocent."

"2. Where it is shown to the satisfaction of one of His Majesty's Principal Secretaries of State that the enemy Government is drawing supplies for its armed forces from or through a neutral country, he may direct that in respect of ships bound for a port in that country, Article 35 of the said Declaration shall not apply. Such direction shall be notified in the *London Gazette* and shall operate until the same is withdrawn. So long as such direction is in force, a vessel which is carrying conditional contraband to a port in that country shall not be immune from capture." (British Order in Council, Oct. 29, 1914. (Enclosure in a dispatch from Ambassador Page to Secretary of State Bryan, Nov. 3, 1914. *United States Foreign Relations, 1914, Supplement*, 262-3.)

5. For French and Russian regulations similar to



the British decree of October 29, 1914, see the *American Journal of International Law*, Vol. 9, *Special Supplement*, 24, 26, 31, 35-36.

6. For a similar German ordinance of April 18, 1915 justified as "in retaliation of the regulations adopted by England and her allies, deviating from the London declaration," see the *American Journal of International Law*, Vol. 9, *Special Supplement*, 45-6.

"The United States has made earnest representations to Great Britain in regard to the seizure and detention by the British authorities of all American ships or cargoes *bona fide* destined to neutral ports on the ground that such seizures and detentions were contrary to the existing rules of international law. It will be recalled, however, that American courts have established various rules bearing on the matters. The rule of 'continuous voyage' has been not only asserted by American tribunals but extended by them. They have exercised the right to determine from the circumstances whether the ostensible was the real destination. They have held that the shipment of articles of contraband to a neutral port 'to order,' from which, as a matter of fact, cargoes had been transhipped to the enemy, is corroborative evidence that the cargo is really destined to the enemy instead of to the neutral port of delivery. It is thus seen that some of the doctrines which appear to bear harshly upon neutrals at the present time are analogous to or outgrowths from policies adopted by the United States when it was a belligerent. The Government therefore cannot consistently protest against the application of rules which it has followed in the past, unless they have not been practiced as heretofore." (Secretary of State Bryan to Senator Stone, January 20, 1915. *United States Foreign Relations*, 1914, *Supplement*, ix.)

8. "No one in these days will dispute the general proposition that a belligerent is entitled to capture contraband goods on their way to the enemy; that right has now become consecrated by long usage and general acquiescence. Though the right is ancient, the means of exercising it alter and develop with the changes in the methods and machinery of commerce. A century ago the difficulties of land transport rendered it impracticable for the belligerent to obtain supplies of sea-borne goods through a neighboring neutral country. Consequently the belligerent actions of his opponents neither required nor justified any interference with shipments on their

way to a neutral port. This principle was recognized and acted on in the decisions in which Lord Stowell laid down the lines on which captures of such goods should be dealt with.

"The advent of steam power has rendered it as easy for a belligerent to supply himself through the ports of a neutral contiguous country as through his own, and has therefore rendered it impossible for his opponent to refrain from interfering with commerce intended for the enemy merely because it is on its way to a neutral port.

"No better instance of the necessity of countering new devices for despatching contraband goods to an enemy by new methods of applying the fundamental principle of the right to capture contraband can be given than the steps which the Government of the United States found it necessary to take during the American Civil War. It was at that time that the doctrine of continuous voyage was first applied to the capture of contraband, that is to say, it was then for the first time that the belligerent found himself obliged to capture contraband goods on their way to the enemy, even though at the time of capture they were *en route* for a neutral port from which they were intended subsequently to continue their journey. The policy then followed by the Government of the United States was not inconsistent with general principles already sanctioned by international law, and met with no protest from His Majesty's Government, though it was upon British cargoes and upon British ships that the losses and the inconvenience due to this new development of the application of the old rule of international law principally fell. The criticisms which have been directed against the steps then taken by the United States came, and come, from those who saw in the methods employed in Napoleonic times for the prevention of contraband a limitation upon the right itself, and failed to see that in Napoleonic times goods on their way to a neutral port were immune from capture, not because the immediate destination conferred a privilege, but because capture under such circumstances were unnecessary."

"The most difficult questions in connection with conditional contraband arise with reference to the shipment of foodstuffs. No country has maintained more stoutly than Great Britain in modern times the principle that a belligerent should abstain from interference with the foodstuffs intended for the civil population. The circumstances of the present struggle are causing His Majesty's Government some anxiety as to whether the existing rules with regard to conditional contraband, named as they were with the

object of protecting so far as possible the supplies which were intended for the civil population are effective for the purpose, or suitable to the conditions present. The principle which I have indicated above is one which His Majesty's Government have constantly had to uphold against the opposition of continental powers. In the absence of some certainty that the rule would be respected by both parties to this conflict, we feel great doubt whether it should be regarded as an established principle of international law." (British Foreign Office note of February 10, 1915. *United States Foreign Relations*, 1915, *Supplement*, 324, 327-8, 332.)

9. "In October and November 1914 the *Kim*, the *Alfred Nobel*, the *Bjornsterjne Bjornson*, and the *Fridland*, all Norwegian ships except the *Fridland*, which was Swedish, sailed from New York for Copenhagen. In their cargoes were foodstuffs, rubber, and hides."

"In these cases inference as to ultimate destination to Germany of goods consigned to Copenhagen was based in the first instance upon the rapid increase in the relative amount of such goods shipped to Copenhagen in corresponding months of 1913 and 1914. There was also an argument on the ground of evident deception and misinformation." (United States Naval War College, *International Law Situations*, 1933, 20-21.)

10. Sir Samuel Evans in holding the cargoes of the *Kim* and the three other ships liable to condemnation as contraband declared:

"Two important doctrines familiar to international law come prominently forward for consideration: the one is embodied in the rule as to 'continuous voyage,' or continuous 'transportation'; the other relates to the ultimate hostile destination of conditional and absolute contraband respectively.

"The doctrine of 'continuous voyage' was first applied by the English Prize Courts to unlawful trading. There is no reported case in our Courts where the doctrine is applied in terms to the carriage of contraband; but it was so applied and extended by the United States Courts against this country in the time of the American Civil War; and its application was acceded to by the British Government of the day; and was, moreover, acted upon by the International Commission which sat under the Treaty between this country and America, made at Washington on May 8, 1871, when the commission, composed of an Italian, an American, and a British delegate, unanimously disallowed the claims in *The Peterhoff*, which was the leading case upon the subject of continuous transportation in relation to contraband goods. . . ."



"I am not going through the history of it, but the doctrine was asserted by Lord Salisbury at the time of the South African war with reference to German vessels carrying goods to Delagoa Bay, and as he was dealing with Germany, he fortified himself by referring to the view of Bluntschli as the true view as follows: 'If the ships or goods are sent to the destination of a neutral port only the better to come to the aid of the enemy there will be contraband of war, and confiscation will be justified.'"

"It is essential to appreciate that the foundation of the law of contraband, and the reason for the doctrine of continuous voyage which has been grafted into it, is the right of a belligerent to prevent certain goods from reaching the country of the enemy for his military use."

"A compromise was attempted by the London Conference in the unratified Declaration of London. The doctrine of continuous voyage or continuous transportation was conceded to the full by the conference in the case of absolute contraband, and it was expressly declared that 'it is immaterial whether the carriage or the goods is direct, or entails transshipment, or a subsequent transport by land.

"As to conditional contraband, the attempted compromise was that the doctrine was excluded in the case of conditional contraband except where the enemy country had no seaboard. As is usual in compromises, there seems to be an absence of logical reason for the exclusion. If it is right that a belligerent should be permitted to capture absolute contraband proceeding by various voyages or transport with an ultimate destination for the enemy territory, why should he not be allowed to capture goods which, though not absolutely contraband, become contraband by reason of a further destination to the enemy Government or its armed forces? And with the facilities of transportation by sea and by land which now exist the right of a belligerent to capture conditional contraband would be of a very shadowy value if a mere consignment to a neutral port were sufficient to protect the goods. It appears also to be obvious that in these days of easy transit, if the doctrine of continuous voyage or continuous transportation is to hold at all, it must cover not only voyages from port to port at sea, but also transport by land until the real, as distinguished from the merely ostensible, destination of the goods is reached."

"I have no hesitation in pronouncing that, in my view, the doctrine of continuous voyage, or transportation, both in relation to carriage by sea and to carriage over land, had become part of the



law of nations at the commencement of the present war, in accordance with the principles of recognized legal decisions, and with the view of the great body of modern jurists, and also with the practice of nations in recent maritime warfare.

"The result is that the Court is not restricted in its vision to the primary consignments of the goods in these cases to the neutral port of Copenhagen; but is entitled, and bound, to take a more extended outlook in order to ascertain whether this neutral destination was merely ostensible and, if so, what the real ultimate destination was." (*The Kim; The Alfred Nobel; The Bjornsterjne Bjornson; The Fridland* (1915). III *Lloyd's Prize Cases* 167, 355-359.)

11. In deciding that the goods were ultimately destined for enemy territory, Sir Samuel Evans, stated:

"As to the real destination of a cargo, one of the chief tests is whether it was consigned to the neutral port to be there delivered for the purpose of being imported into the common stock of the country."

". . . I have no hesitation in stating my conclusion that the cargoes (other than the small portions acquired by persons in Scandinavia whose claims are allowed) were not destined for consumption or use in Denmark or intended to be incorporated into the general stock of that country by sale or otherwise; that Copenhagen was not the real *bona fide* place of delivery; but that the cargoes were on their way at the time of capture to German territory as their actual and real destination." (*The Kim; The Alfred Nobel; The Bjornsterjne Bjornson; The Fridland*. III *Lloyd's Prize Cases*, 167, 359, 362.)

12. "1. The provisions of the Declaration of London, Order in Council No. 2, 1914, shall not be deemed to limit or to have limited in any way the right of His Majesty, in accordance with the law of nations, to capture goods upon the ground that they are conditional contraband, nor to affect or to have affected the liability of conditional contraband to capture, whether the carriage of the goods to their destination be direct or entail transshipment or a subsequent transport by land.

"2. The provisions of Article 1 (ii) and (iii) of the said Order in Council shall apply to absolute contraband as well as to conditional contraband.

"3. The destinations referred to in Article 30 and in Article 33

of the said Declaration shall (in addition to any presumptions laid down in the said Order in Council) be presumed to exist, if the goods are consigned to or for a person, who, during the present hostilities, has forwarded imported contraband goods to territory belonging to or occupied by the enemy.

"4. In the cases covered by Articles 2 and 3 of this Order, it shall lie upon the owner of the goods to prove that their destination was innocent." (British "Declaration of London Order in Council, 1916," March 30, 1916. *United States Foreign Relations*, 1916, *Supplement*, 361.)

13. In regard to the meaning of Article 1 of the above Order in Council, see *The Kronprinsessan Margareta*, (1921), VIII *Lloyd's Prize Cases*, 241, 267-9. Also Briggs, H. W., *Doctrine of Continuous Voyage*, (1926), 111-112.

14. "(a) The hostile destination required for the condemnation of contraband articles shall be presumed to exist, until the contrary is shown, if the goods are consigned to or for an enemy authority, or an agent of the enemy State, or to or for a person in a territory belonging to or occupied by the enemy, or to or for a person who, during the present hostilities, has forwarded contraband goods to an enemy authority, or an agent of the enemy State, or to or for a person in territory belonging to or occupied by the enemy, or if the goods are consigned 'to order,' or if the ship's papers do not show who is the real consignee of the goods.

"(b) The principle of continuous voyage or ultimate destination shall be applicable both in cases of contraband and of blockade." (British order in Council of July 7, 1916. *United States Foreign Relations*, 1916, *Supplement*, 413-4.)

14. The Department of State through its Ambassador to Great Britain protested against this Order in Council, stating that the rules asserted in this Order in Council were in conflict with the law and practice of nations in several instances and that the United States reserved its rights. (Secretary Lansing to the Chargé d'Affaires in Great Britain, Laughlin, Sept. 18, 1916. *United States Foreign Relations*, 1916, *Supplement*, 446-7.)

15. In the case of *The Balto*, the British had seized

leather on board this Norwegian vessel bound from the United States to Sweden as contraband of war. The owners claimed that the leather was destined for use only in Sweden. The Crown "sought discovery with respect to the books of the consignee-claimant concerning its transactions in boots as well as in leather."

Sir Samuel Evans granted discovery and said :

"The objection for the claimant is that the leather cannot in any circumstances be seized as prize, if it was intended to be manufactured into boots in Sweden, although the boots were to be sent to the forces of the enemy."

"It is the claimant's contention, that contraband goods cannot be seized on a continuous voyage, unless they were on their way to a final enemy destination in the same condition as they were at the time of seizure sound? As at present advised, I think it is quite unsound."

"One of the tests applied [in the Kim case] was whether the goods imported were intended to become part of the common stock of the neutral country into which they were first brought. In my view the notion that leather, imported to a neutral country for the express purpose of being at once turned into boots for the enemy forces, becomes incorporated in the common stock of the neutral country, is illusory. Instances can be given and multiplied which appear to reduce to an absurdity the argument that if work is done in the neutral country upon goods which are intended ultimately for the enemy, that circumstance of necessity puts an end to their contraband character, and prevents their being confiscable according to the doctrine of continuous voyage."

"Suppose coffee beans and cocoa beans were imported into a neutral country with the object of their being converted into coffee or cocoa to be sent on to the enemy, would the fact that the coffee beans were ground into coffee, or the cocoa beans were ground and mixed with sugar to make cocoa in the neutral country, be enough to render those goods immune from capture, if they would be capturable as coffee or cocoa foodstuffs when afloat? . . . If a field gun was imported, would it be protected from seizure because it would, in fact, be mounted upon its appropriate carriage before being exported from a neutral country to the enemy's front?

"The Court could not give affirmative answers to such questions



as these unless it cut itself adrift from the safe anchor of common sense." (*The Balto*, (1907). VI *Lloyd's Prize Cases*, 141, 147-9.)

16. "69. Contraband, in paragraph 24 (a), (b), (c), and (d), is liable to capture if its actual destination is the territory belonging to or occupied by the enemy, or the armed forces of the enemy. It is immaterial whether the carriage of the contraband to such actual destination be direct in the original vessel or involve trans-shipment or transport overland.

"70. Contraband, in paragraph 24 (e), is liable to capture if it is actually destined for the use of the enemy government or its armed forces. It is immaterial whether the carriage of contraband be direct in the original vessel, or involves trans-shipment or transport overland.

"71. A destination for the use of the enemy government or its armed forces referred to in paragraph 70 is presumed to exist if the contraband is consigned—

"(a) To enemy authorities.

"(b) To a part of equipment or supply of the armed forces of the enemy or other place serving as a base for such armed forces.

"(c) To a contractor or agent in enemy territory who, by common knowledge, supplies articles of the kind in question to the enemy authorities."

"72. A destination to territory belonging to or occupied by the enemy or to the armed forces of the enemy, referred to in paragraph 69, is presumed to exist if the contraband is consigned 'to order,' 'to order or assigns,' or with an unnamed consignee, but in any case going to territory belonging to or occupied by the enemy, or to neutral territory in the vicinity thereof." (*United States Naval Instructions, 1917. Instructions for the Navy of the United States Governing Maritime Warfare*, June, 1917, 27-8.)

17. "In modern times the two chief points of controversy have related to the carriage of contraband and to trading through blockaded ports." "... I only wish to note and extract the principle upon which they are based. Broadly, the principle is that the maritime commerce of neutrals is subject to restriction by the acts of States at war, if that commerce tends to assist an enemy either directly in his warlike operations, or indirectly in the carrying on of his own trade upon which his power of continuing the war may largely, or even entirely, depend. The object, and the enemy's commerce. The result, and the inevitable result, to neutrals is interference with their trade."



"In the application of the principle, the boundary of the law of nations has been extended from time to time to adapt itself to new and ever-changing conditions. This law must from its nature have room for expansion. It cannot and never could be squeezed into a mould of a particular size or shape. It never had or could have the quality of immutability attributed to the laws of the Medes and Persians. It could not be confined within artificial limits like an Act of Parliament. It has the essence and qualities of a living organism like the common law of this realm."

"In the two branches already mentioned, namely, contraband and blockade, this natural development is clearly illustrated. Contraband goods were at one time comprised within a very limited catalogue. At the present day, the list is extensively enlarged. The result to neutrals has been that their trade in such goods has to run greater and increasing risks and penalties. Moreover, in recent times not only have the contraband goods themselves been subject to confiscation, but the neutral vessels which carry them have also been rendered confiscable in many cases. It has become established law, too, that other goods on the same vessel belonging to the same neutral character or enemy destination. It may be added, also, that the application of the doctrine of continuous voyage to contraband trade has greatly encroached upon and fettered the trade of neutrals in time of war. This doctrine was originated in connection with the so-called 'Rule of 1756,' but since its extension to trade in contraband goods by the Courts of North American States at the time of the Civil War it has become established as part of the law of nations." (Sir Samuel Evans, February 16, 1917, supporting the Retaliatory Order in Council in *The Leonora and Other Vessels* (1918). VII *Lloyd's Prize Cases*, 262, 300.)

18. On March 7, 1918, the German Supreme Prize Court upheld the seizure of conditional contraband bound from Rotterdam to Norway on board *The Norden* as contraband of war. The court declared that a presumption of enemy destination arising from the fact that the shipment of conditional contraband was consigned "to order" was not overcome by the fact that the goods were to be processed in a neutral country. The court maintained that a further demonstration was required that the product would not be of use to the enemy. (Garner, J. W., Prize Law

During the World War (1927), 573.)

19. "The lists of contraband both absolute and conditional have varied from time to time and according to circumstances. The belligerent has usually stood for an extended list while the neutral has desired a restricted list. Destination has always been a deciding factor in determining contraband. This has been particularly important in the application of the doctrine of continuous voyage. It has been maintained that the ultimate destination is to the country in which the goods are actually to become 'a part of the common stock.'

"Many of the questions relating to ultimate destination were raised in the American Civil War. The party to whom the goods may be consigned does not always prove the ultimate destination. Goods often in time of peace are 'to order or assigns.' Even the British Government in the American Civil War did not deny that such consignments on British vessels might not be open to suspicion 'which might be dispelled by the shippers.' Somewhat similar questions might arise in shipments of goods to branches or agents or when no consignee is named." (United States Naval War College, *International Law Situations*, 1933, 20-1.)

By the end of World War I, the doctrine of continuous voyage tended to include a doctrine of substitution. For example, in the case of *The Bonna* (1918) the British had seized a cargo of Swedish-owned cocoanut oil (conditional contraband) on board this Norwegian vessel. The cocoanut oil was destined to Sweden to be used in the making of margarine for consumption in Sweden. The Crown claimed that the cocoanut oil was liable to capture on the ground that "to the knowledge of the manufacturer, the margarine was to be consumed in Sweden in substitution for Swedish butter which in turn would be shipped to Germany." The British court held, however, that the cocoanut oil was not liable to condemnation as conditional contraband destined for German military use. See *The Bonna*, (1918), VII *Lloyd's Prize Cases*, 367, 376-8.

#### (4) *Destination—Conditional Contraband.*

With or without the doctrine of continuous voyage,

the question of destination was of vital importance in the determination of conditional contraband. At the beginning of World War I most nations agreed that articles (as named in a list) which can be used in war as well as in peace can be considered contraband of war only if destined to the army, navy, or other department of the government of one of the belligerents or to a place held by military forces. As the war continued not only the line between absolute and conditional contraband tended to become obscured but also the line between government and private enterprise, for World War I had developed into a total war. Consequently, by the end of the conflict the few goods remaining on the conditional contraband list were seized by the belligerents aboard ships bound from one neutral country to another neutral country as being destined for the enemy government.

1. Conditional contraband "consists, generally speaking, of articles which are susceptible of use in war as well as for purposes of peace . . ."

"Articles of the character stated are considered contraband if destined to the army, navy, or department of government of one of the belligerents or to a place occupied and held by military forces; if not so destined they are not contraband, as for example, when bound to an individual or private concern." (Department of State circular, 1914. *United States Foreign Relations*, 1914, *Supplement*, 274, 276.)

2. "Destination to enemy territory is not, and cannot properly be, considered a good and sufficient ground for seizure of foodstuffs or other conditional contraband, unless they are destined for the use of the armed forces or of a government department of the enemy state." (Acting Secretary of State Lansing to the Ambassador to Great Britain Page, Sept. 26, 1914. *United States Foreign Relations*, 1914, *Supplement*, 229.)

3. "... the right of neutrals to ship foodstuffs and other conditional contraband to the territories of belligerents, when destined and intended for use by the civilian population and not destined or intended for ultimate delivery to a department of the belligerent



government, or its armed forces, is well established. But shippers proposing to send foodstuffs to Germany should consider the situation produced by reported recent decree of the German authorities, which, from the accounts of it received by the Department, appears to establish a governmental control, if not to constitute expropriation, of the food supply in Germany. The British Government have said that, in view of this decree and its effect, they must regard shipments of foodstuffs to Germany as, in fact, destined for the German Government. Without at this time undertaking to determine the effect of the decree, the text of which we have not, the Department feels that interested persons should be advised that the status of shipments of provisions to Germany is put in doubt by reason of the decree mentioned." (Secretary of State Bryan to the Secretary of the Treasury McAdoo, Feb. 3, 1915, in reply to an inquiry. *United States Foreign Relations*, 1915, *Supplement*, 318, 319.)

4. Great Britain and France in 1915 informed the Department of State "that on account of a German decree by which all foodstuffs were taken over by the Government all such commodities destined for Germany would be considered subject to capture." (Ambassador Page to Secretary of State Bryan, Jan. 27, 1915 and French Ambassador Jusserand to Secretary of State Bryan, February 6, 1915. *United States Foreign Relations*, 1915, *Supplement*, 317, 322.)

5. "A Norwegian sailing vessel which left a British port before the outbreak of war in 1914 with a cargo of coal for Chile was forced by damage to deviate from the direct route to its destination. The cargo was seized by a German war vessel on suspicion that it was destined for English naval forces, but the vessel was allowed to go free because it could not be taken to port. Claims were brought before the Hamburg Prize Court for the coal taken and for the damage suffered by the ship. The court upheld the capture, but the decision was reversed upon appeal to the Imperial Supreme Prize Court, on the basis of article 35 of the Declaration of London and the corresponding article 36 of the German Prize Ordinance. It was stated that the coal was conditional contraband, that no proof was furnished of its destination to the enemy armed forces, and that full faith would be given to the ship's papers." (*The Helicon*, (1916). Hackworth, G. H., *Digest of International Law*, Vol. VII, 67.)

6. "The cargo consisted of 3,238 barrels of salted herrings, consigned from Haugesund to Lubeck. Lubeck is a German base of



supply. It is also a port which has been used on a very extensive scale since the war for the importation of goods from Scandinavia into Germany. Moreover, orders have been made by the German Federal Council regulating the import of salted herrings into the German Empire, whereby they must all be delivered to the Central Purchasing Company, Limited, of Berlin, a company acting under the directions of the German Imperial Chancellor. . . .”

“There is no doubt of its contraband character, or of its destination for the enemy Government or its forces.” (Sir Samuel Evans, in *The Hakan case*, (1916). V. *Lloyd’s Prize Cases*, 161, 168–9, 188.)

7. “A French court condemned food shipped on a neutral Italian steamer, *The Sibilla*, as conditional contraband with a hostile destination. The steamer was sailing from Barcelona to Genoa, and the food was apparently destined for Germany.” (Hackworth, G. H., *Digest of International Law*, Vol. VII, 70. For other similar French cases see Garner, J. W., *Prize Law During the World War*, (1917), 555n.)

8. 70. “Contraband, in paragraph 24 (e), is liable to capture if it is actually destined for the use of the enemy government or its armed forces. It is immaterial whether the carriage of contraband be direct in the original vessel, or involves trans-shipment or transport overland.”

71. “A destination for the use of the enemy government or its armed forces referred to in paragraph 70 is presumed to exist if the contraband is consigned—

“(a) To enemy authorities.

“(b) To a part of equipment or supply of the armed forces of the enemy or other place serving as a base for such armed forces.

“(c) To a contractor or agent in enemy territory who, by common knowledge, supplies articles of the kind in question to the enemy authorities.” (*Instructions for the Navy of the United States Governing Maritime Warfare*, June, 1917, 27–8.)

9. “It is clear that the ultimate as opposed to the ostensible destination of goods would seldom, if ever, appear on the ship’s papers or be within the knowledge of the master or crew. It would have to be proved or inferred from other sources, and it could hardly be contended that if the Crown were in possession of evidence obtained from such other sources from which an ultimate destination in an enemy country could be inferred as reasonably probably, the seizure of the goods would not be justified.” (*The Baron Stjernblad*, (1918), VI *Lloyd’s Prize Cases*, 89, 102.)

10. The British seized and condemned a cargo of cocoa shipped from New York to Scandinavian consignees. The cargo was condemned as conditional contraband after it was demonstrated that the stocks of cocoa in Germany were controlled by the German Government and that the goods had an ultimate German destination. Lord Sterndale held that the cocoa would be used for the German military forces. (*The Esrom*, (1919). VIII *Lloyd's Prize Cases*, 492.)

11. "If a distinction is made between absolute and conditional contraband, the distinction between enemy country and enemy forces becomes important. If an unfortified area becomes fortified, its status changes as a place to which goods may without liability be shipped. If the population of an area which has been subject only to the civil law is mobilized and put under military control the status of the population changes as a population to which goods may without liability be shipped." (United States Naval War College, *International Law Situations*, 1933, 21-2.)

#### (5) *Destination—Further Refinements.*

The question of destination is even more complicated than it appears on the surface. Before and after the question of absolute or conditional contraband has been resolved by really establishing one absolute list and the line between government and private enterprise has been erased, there has still been the difficulty of actually proving enemy destination from the ship's documents, for many deceptions have been practiced by shippers to conceal enemy destination. On the other hand belligerents, desirous of preventing all goods of any value in an all-out war effort from reaching the enemy, have resorted to stringent methods such as the examination of trade statistics in order to prove enemy destination, with or without the intention of applying the doctrine of continuous voyage.

1. Lord Parker gave an order for discovery in a case concerning the condemnation of hides and tanning materials aboard a Swedish vessel bound from South America for Sweden and said:

"The goods having been shipped in a neutral vessel, and ostensibly destined for a neutral port, can only be contraband of war if, on the principle of continuous voyage, and according they had a further or ultimate destination in an enemy country. Intention is rarely the subject of direct evidence. As a rule it has to be inferred from surrounding circumstances, and every circumstance which could, either alone or in connection with other circumstances, give rise to an inference as to the intention of the parties concerned in a transaction both relates and is relevant to the question what that intention really was." (*The Consul Corfitzon*, (1917). VI *Lloyd's Prize Cases*, 268, 274.)

2. See above, No. 16 under *Destination—Continuous Voyage and Contraband*, for U. S. Naval Instructions, 1917.

(a) *Exporter's intention unimportant.*

1. "It is not sufficient for the appellants to establish that Enrique Rubio was a Spanish fruit exporter, who had no intention of sending his goods either to any enemy government or to an enemy base of supply. The voyage is not limited to that which a shipper of goods sets in motion. Whether goods in any particular instance are contraband, by application of the doctrine of continuous voyage, is a question of fact. Under the terms of the Order in Council the appellants must discharge the burden of proving that the destination, if the voyage had not been interrupted, would have been innocent. When an exporter ships goods under such conditions that he does not retain control of their disposal after arrival at the port of delivery, and the control, but for their interception and seizure, would have passed into the hands of some other persons, who had the intention either to sell them to an enemy government or to send them to an enemy base of supply, then the doctrine of continuous voyage becomes applicable, and the goods on capture are liable to condemnation as contraband." (Lord Parmoor in the case of *The Norne and Other Vessels*, (1921). IX *Lloyd's Prize Cases* 402, 427.)

(b) *Neutral port auction.*

1. The Judicial Committee of the Privy Council condemned a cargo of oranges shipped from Spain to neutral dealers in the Netherlands for auction in the Netherlands. Lord Parmoor, said:

"... Their Lordships are unable to hold that the mere fact that



the goods will be offered for sale by auction at the port of arrival is in itself conclusive of the innocence of their destination. It would appear to them to be too wide a generalization that whatever the special conditions may be, the goods could never be condemned as contraband if once it is established that they would be offered at public auction in a neutral auction in a neutral market." (*The Norne and Other Vessels*, (1921). IX *Lloyd's Prize Cases*, 402, 431-2.)

(c) *Concealment.*

1. "*The Lyngenfjord*, a Norwegian vessel, was bound from New York to Norway, carrying according to its bill of lading and manifest sacks of coffee. The sacks were seized and condemned by the British when it was discovered that the sacks contained not coffee but a mixture of coffee and rubber (rubber being absolute contraband). No appearance or claim was made by the shippers. The British, of course, induced the German destination from the fact of concealment." (*The Lyngenfjord*, (1916). VI *Lloyd's Prize Cases*, 115.)

(d) *Sales agent.*

1. "In the opinion of their Lordships it would be impossible to say that an ordinary agent for sale is a 'consignee of the goods' within the Order in Council of October 29, 1914. Such an agent would not have the real control of the destination of the goods. It would be within the power of his principal to give instructions from time to time." (*The Urna*, (1920). IX *Lloyd's Prize Cases*, 104, 116. See also *The Kronprins Gustaf*, (1919). IX *Lloyd's Prize Cases*, 137.)

2. The British shipped a cargo of cocoa and coffee (conditional contraband) shipped by an American company on a Danish vessel for Copenhagen, consigned to the American company's agent in Copenhagen. The American company claimed that the cargo was intended for consumption in Denmark. Sir Arthur Channell, speaking for the Judicial Committee of the Privy Council declared that there were grounds for the condemnation of the cargo and said:

"... In the present case there is no doubt that the burden of that proof is thrown on the respondents, inasmuch as the consignee named in the bills of lading is admitted to be an agent for sale of the goods on behalf of the claimants, the consignors, and there-



fore was not the real consignee under the Order in Council of October 29, 1914, as interpreted in the Louisiana and other cases." (The United States, (1921). X *Lloyd's Prize Cases*, 61, 65-66.)

(e) *Enemy agent.*

1. Modification of the Declaration of London by the British Order in Council of Oct. 29, 1914:

"(ii) The destination referred to in Article 33 of the said declaration shall (in addition to the presumptions laid down in Article 34) be presumed to exist if the goods are consigned to or for an agent of the enemy state." (*United States Foreign Relations*, 1914, *Supplement*, 258, 262.)

2. Sir Samuel Evans in condemning cattle feed on board a Norwegian vessel traveling from Brazil to Norway declared:

"... These goods were sent nominally to people who are, according to the evidence before me, agents for the German Government and conduit pipes for the transmission of such goods as these to Germany. ... Upon the evidence before me, it would not be violent presumption to say that these goods were on their way through these agents to German territory for the use of the German forces. Upon that ground also the goods, being conditional contraband, are confiscable." (*The Tysla*, (1916), V *Lloyd's Prize Cases*, 433, 436. See also *The Liv and Other Vessels*, (1917). VII *Lloyd's Prize Cases*, 85.)

(f) *Consignment "to Order."*

1. Before the announcement of the Order in Council of October 29, 1914, the British Foreign Office sent a draft to the Department of State. In regard to articles (iii) and (iv) of this Order in Council, the British Foreign Office state:

"With regard to conditional contraband, Article 35 of the Declaration of London is left standing and will, therefore, exclude the application of the doctrine of continuous voyage in respect of goods consigned to a neutral firm at a neutral port. The right to seize conditional contraband on a ship bound for a neutral port is maintained . . . in respect of cases where no consignee in the neutral country is disclosed in the ship's papers. A great proportion of the cargo shipped to Rotterdam is consigned merely 'to order' and may be intended for transit to the enemy country. In such cases, and

where the goods are carried with a through bill of lading to the enemy country, Article 35 would not apply." (*United States Foreign Relations*, 1914, *Supplement*, 246.)

"2. Department reiterates its position, as stated in the case of the *Kroonland* respecting shipments 'to Order,' and holds that shipments of consignments to neutral countries, though to shippers' order, being in usual course and in accordance with established custom of trade for protection of shipper against refusal of draft, cannot rightfully be seized as contraband in absence of facts tending to show that they are in fact destined for belligerents; and as to the legality of the action of Great Britain in seizing American shipments on neutral ships to neutral countries as in the above cases on ground merely that shipments are consigned to order, the Government of the United States enters an explicit denial." (Instruction from Secretary of State Bryan to Ambassador to Great Britain Page, Dec. 3, 1914. *United States Foreign Relations*, 1914, *Supplement*, 354.)

3. "Another circumstance which has been regarded as important in determining the question of real or ostensible destination at the neutral port was the consignment 'to order or assigns' without naming any consignee."

"I am not unmindful of the argument that consignment 'to order' is common in these days. . . ."

"The argument still remains good, that if shippers, after the outbreak of war, consign goods of the nature of contraband to their own order without naming a consignee, it may be a circumstance of suspicion in considering the question whether the goods were really intended for the neutral country, or whether they had another ultimate destination. Of course, it is not conclusive. The suspicion arising from this form of consignment during war might be dispelled by evidence produced by the shippers. It may be here observed that some point was made that in many of the consignments the bills of lading were not made out 'to order' simpliciter, but to branches or agents of the shippers. That circumstance does not, in my opinion, make any material difference." (*The Kim; The Alfred Nobel; The Bjornsterjne Bjornson; The Fridland*, (1915). III *Lloyd's Prize Cases* (167, 300-1.)

4. "The French Prize Council, in February 1915, said that in the case of conditional contraband it was, as a matter of principle, incumbent upon the captor to establish that the goods were destined for the use of the forces or government of the enemy but that when the consignment was 'to order' it did not possess the means

of doing so and could not be required to do so. It stated that in such a case there was justification for inquiring into any facts serving to establish the true destination of the goods." (Comment on the case of *The Nieuw-Amsterdam*, (1915), in Hackworth, G. H., *Digest of International Law*, VII, 73.)

5. "Shipments of honey and coffee (conditional contraband) were sent from the West Indies before the war in 1914 on a Netherlands vessel consigned 'to order' at Hamburg. The vessel was seized, and proceedings were brought to condemn the cargo as contraband. The French Prize Council held that condemnation was not justified, as there was no evidence that the consignees were intermediaries of the German state or of the German administration. The Council released the goods to the claimants on condition that they pay the freight to the ship-owner; it ordered the French Government to pay the ship-owner damages caused by the delay to the vessel and interest on the freight." (Comment on the case of *The Oranje Nassau*, (1915), in Hackworth, G. H., *Digest of International Law*, VII, 73.)

6. "In August 1915 the French Prize Council restored to the owners a cargo of conditional contraband destined for Amsterdam and consigned 'to order,' stating that the latter circumstance did not constitute proof of ultimate destination to the armed forces or government of the enemy." (Comment on the case of *The Kambangan*, (1916), in Hackworth, G. H., *Digest of International Law*, VII, 73.)

7. "A Norwegian vessel carrying a cargo of pyrites and fish from Norway destined to Rotterdam was seized by a German cruiser and brought into port. The pyrites were consigned to the Netherlands Oversea Trust or order. The Hamburg Prize Court condemned the vessel and its cargo, as pyrites were absolute contraband. The German Supreme Prize Court of Berlin affirmed the decision. It pointed out that the consignment was 'to order' and therefore there was a presumption that the destination was to enemy territory. The court refused to accept the distinction argued for by the claimants between consignments 'to order' and consignments to a named consignee or his order, saying:

"'. . . Indeed a bill of lading intended to pass from hand to hand does not permit one to know from its own contents whether the first consignee which is found mentioned therein will be the one who is to receive the merchandise when the transportation has once been completed. It is just this uncertainty which . . . is decisive with respect to the legal presumption in prize law. The



situation is then almost the same for bills of lading of the sort here in question as for bills of lading purely to order.' (Translation)"

"The court also pointed out that the Netherlands Oversea Trust was set up in cooperation with the British; that under the contracts between Netherlands importers and the N.O.T. there was no obstacle to the re-export of goods to England; and that, indeed, under the arrangements with the N.O.T. in certain circumstances goods might be sent back from Netherlands ports to English ports for submission to the British prize courts. It held that the legal presumption of enemy destination had not been overcome by the particular circumstances of the case." (Comment on the case of *The Lupus*, (1917), in Hackworth, G. H., *Digest of International Law*, VII, 55-6.)

### (g) *Intervening belligerent port.*

1. The German Imperial Supreme Prize Court condemned *The Alexandra*, a Danish vessel bound from Copenhagen to the neutral port of Boston, and its cargo. The goods, absolute contraband under the German rules, was condemned because the ship had intended to stop en route at an enemy British port for coal. The court stated:

"It must be admitted, in effect, that the enemy destination of the goods is proven, since before reaching Boston the ship had to touch there . . . only for the purpose of coaling. This interpretation tough there . . . only for the purpose of coaling. This interpretation follows even from the text of the disposition (Art. 30, par. 1b. of the German prize ordinance), and it is confirmed by Article 30 of the Declaration of London and by the commentary thereon contained in the General Report. If the ship touches an enemy port, says the commentary, there will be a strong temptation for the master to disembark the contraband which he could probably sell at a high price and there would be an equal temptation for the local authorities to requisition it. It may be remarked at the same time that the claimants are not allowed to prove that there was a really neutral destination that this was the intention of the owners." (*The Alexandra*, (1917). Garner, J. W., *Prize Law During the World War*, (1927), 536-7).

2. "The Norwegian vessel *Semantha*, while carrying a cargo listed by Germany as conditional contraband, with directions to stop at one of the British ports of Queenstown, Falmouth, or Ply-

mouth for orders, was seized by a German vessel and sunk. In upholding the condemnation of the goods, the Supreme Prize Court of Berlin admitted that the actual destination of the goods in the case of conditional contraband was decisive. However, there was no proof as to the destination intended for these goods. The court applied article 37 of the German Prize Ordinance, to the effect that an enemy destination may be presumed as to a vessel carrying conditional contraband whose papers either do not show a destination for the voyage or permit the vessel to enter an enemy port. It held that one of the three ports named in the *Semantha's* papers could be regarded as the port of destination and that, since all the ports in question were considered bases of supply for the enemy armed forces, a presumption of hostile destination arose against the goods which the claimants did nothing to rebut." (Comment on the case of *The Semantha*, (1916), in Hackworth, G. H., *Digest of International Law*, VII, 72.)

(h) "Dummy" consignees.

1. "... the named 'consigned' must be a real and genuine consignee in the business and commercial sense. The fact that a person who happens to be in existence is named, if he be merely a nominee without any interest, or dummy consignee, is not enough." (*The Indianic* and *The Sydland*, (1917). V *Lloyd's Prize Cases*, 267, 279.)

(i) *Real consignee not shown.*

1. Lord Parker, in upholding the condemnation of certain cargoes of conditional contraband consigned to named consignees in Sweden, declared:

"... The effect of the Order [the Order in Council of Oct. 29, 1914] is, therefore, to waive the doctrine of continuous voyage except in those cases expressly referred to in the modification. The appellants contend that none of the goods in question in these appeals can be brought within any of the cases referred to. None of the goods were consigned 'to order.' The bill of lading, which formed one of the ship's papers, showed in every instance, who was the consignee of the goods, and neither the bill of lading nor any other of the ship's papers showed in any instance a consignee of the goods in territory belonging to or occupied by the enemy.

"Their Lordships are of the opinion that this contention cannot be sustained. It assumes that the words 'if the ship's papers do not show the consignee of the goods' mean 'if the ship's papers do not

show a consignee of the goods.' . . . the reason for not waiving the doctrine of continuous voyage in the case of consignments to order can only have been that in the case of such consignments the shipper retains the control of the goods, and can alter their destination as his interests may dictate or circumstances may admit. This control may, however, be retained by the shipper, even if he consigns to a named person, provided that the consignee be bound to indorse or otherwise deal with the bill of lading as directed by the shipper. It would be useless to retain the doctrine of continuous voyage in the case of consignments to order, if the shipper could escape the doctrine by consigning to a clerk in his office and procuring the clerk to indorse the bill. He would in this manner retain as full control of the goods as if the consignment had been to order. It is impossible, in their Lordships' opinion, to construe the Order as an intimation to neutrals that provided they make their consignment to named persons not residing in territory belonging to or occupied by the enemy, they may, in the case of conditional contraband, safely disregard the doctrine of continuous voyage. . . . In their Lordships' opinion, the words 'the consignee of the goods' must mean some person other than the consignor to whom the consignor parts with the real control of the goods. . . . the effect of the Order is to make a considerable concession. Under it merchants in one neutral country can, without risking the condemnation of their goods, consign them for discharge in the ports of another neutral country to the order of buyers or others to whom the principal in the ordinary course of business finally transfers the control of the goods. They are not concerned to inquire how such buyers or other persons intended to deal with the goods after delivery. No intention on the part of the latter to forward the goods to the enemy Government will render the goods liable to condemnation." (*The Louisiana and Other Ships*, (1918). V *Lloyd's Prize Cases*, 230, 263–5. See also *The Kim* and other ships, III *Lloyd's Prize Cases*, 167, 215, 365.)

(j) *Named consignee.*

1. Coffee, destined from Brazil to a Swedish company in Sweden and carried on *The Kronprinsessan Victoria*, a Swedish vessel, was condemned as conditional contraband which was to be forwarded to Hamburg, Germany. The Judicial Committee of the Privy Council in Great Britain, however, al-



though recognizing that the British Prize Court was justified in finding that the ulterior destination, ruled that since the consignees were not "sham" consignees article 35 of the Declaration of London as modified by the Order in Council of Oct. 29, 1914, prevented the capture of the cargo.

The Judicial Committee through Lord Sumner stated:

"... Here the claimants are the named consignees, and, upon the case made in the Prize Court, they were consignees to whom the property has passed before seizure—in fact, the day before. Not only so, but they were consignees to whom the consignors had parted with the real control of the goods. Their intention, however, was to give the goods an ulterior enemy destination. Does this intention prevent them from being persons the insertion of whose names in the bills of lading causes the ship's papers to 'show who is the consignee of the goods'? On principle their Lordships think not. . . ."

"... This appears to be precisely the case, or one of the cases, in which, under the Order in Council in question, the ship's destination and the form of the ship's papers covered the goods. To extend the qualities which may be predicated of the consignee, whom the ship's papers are to show, to qualities connected with his general trade or with particular contracts, independent of the contract of carriage, would be to protect the goods only when the ship's papers show something which in maritime practice they never do and rarely could show. The coffee was accordingly in this case immune from condemnation, its ulterior enemy destination notwithstanding." (*The Kronprinsessan Victoria*, (1919). VII *Lloyd's Prize Cases*, 230, 256.)

2. In *The Oranje Nassau and Other Ships* case, the British seized and condemned cargoes of coffee and cocoa shipped by a German national domiciled in Haiti on neutral vessels. The cargoes were destined to The Netherlands and were consigned to the Netherlands Overseas Trust, for the shipper or a Netherlands bank.

"... The N.O.T. was established in order to prevent contraband being sent into Germany, and in order that goods might be

shipped to them to avoid interference from the British authorities, so that neutral trade might not be molested more than was necessary. But the character in which the N.O.T. received the consignments seems to me to depend upon the facts of each particular case. If they received consignments as agents for consignees who had bought, or purchasers who had bought, the goods, and who, when they arrived in Holland, had the control over them, and could direct their ultimate destination as they liked, then the character of the N.O.T. was that of the purchaser to whom the goods were going, and the N.O.T. would be consignees within the meaning of the Order in Council, and the decisions upon it. But if the N.O.T. were only receiving goods as agents for the consignor, to dispose of them later for the consignor in the way in which he directed, then in my opinion they would not be such consignees, and their position again would be that of the person for whom they were receiving the goods. . . . it does not seem to me that it can be said that the N.O.T. were persons other than the consignor who had the complete control of the goods." (*The Oranje Nassau and Other Ships*, (1919). IX *Lloyd's Prize Cases*, 189, 192-3. See also *The Noordam*, (1919). VIII *Lloyd's Prize Cases*, 337.)

(k) *Trade Statistics*.

1. "A French decree of July 7, 1916 established the presumption of hostile destination in the case of absolute contraband on a ship destined to the ports of a neutral country adjacent to enemy territory when the imports into the neutral country were largely in excess of the normal pre-war importations. The French Prize Council applied this decree in condemning a cargo of wine and spirits sent from Spain to Denmark on a Danish vessel, when it was shown that the normal peacetime importation of wines and spirits amounted to 4,318 metric tons, while the 1916 importations amounted to 35,832 metric tons." (Comment on the case of *The Tiber*, (1918), in Hackworth, G. H., *Digest of International Law*, VII, 52-3.)

2. The Judicial Committee of the Privy Council in dismissing the appeal of the shippers from a condemnation of a cargo of dried fruits, stated:

"... The President has found that the statistical evidence establishes a case which throws upon the appellants the onus of showing that the goods were not going to Germany. Their Lordships concur in this opinion. There is ample statistical evidence to replace an obligation on the appellants to show that the destination of the

goods is innocent. The President further finds that it is impossible for him to say that the appellants have discharged the onus thrown upon them, and their Lordships concur in this finding." (*The Urna*, (1920). IX *Lloyd's Prize Cases* 104, 114.)

3. See also the following cases: *The Kim*; *The Alfred Nobel*; *The Bjornsterjne Bjornson*; *The Fridland*, (1915). III *Lloyd's Prize Cases*, 167, 294–5. *The Kronprinsessan Victoria*, (1919). VII *Lloyd's Prize Cases*, 230, 246. *The Oranje Nassau and Other Ships*, (1919). IX *Lloyd's Prize Cases*, 189, 201.

(1) *Assurances against re-export.*

Some of the European neutral countries tried to assure the belligerents that certain goods if imported into the country would not be re-exported. This assurance was attempted by the promulgation of laws prohibiting the export of those certain commodities and the establishment of government purchasing commissions. Both Great Britain and Germany did not believe that the laws at least, were enough to prevent re-export.

1. ". . . It is true, no doubt, that the municipal laws of both Denmark and Sweden prohibit the export of fodder stuffs, but it is not clear that this prohibition includes transshipment at Danish or Swedish ports, or that licenses for export are not readily granted by the Danish or Swedish authorities, at any rate if the stuffs in question are not really needed for home consumption. The experience of the laws referred to, however stringent, can be evaded." (*The Louisiana and Other Ships*, (1918). V *Lloyd's Prize Cases*, 230, 257–8.)

2. "In a case involving the consignment of dried fruits to the Swedish Victualing Commission, which dealt in such goods for the purpose of 'monopolizing that trade for *bona fide* Swedish consumption,' the British Prize Court found that the Commission did its best to carry out its announced purpose and that the goods in question belonged to the Commission and were *bona fide* intended for consumption in Sweden." (Comment on the case of *The Pacific*; *The San Francisco*, (1917), in Hackworth, G. H., *A Digest of International Law*, VII, 62–3. See VII *Lloyd's Prize Cases*, 75.)

3. "In the case of *The Brage*, the German Imperial Supreme Prize Court sustained the decision of the Kiel Prize Court to condemn a cargo of conditional contraband which was destined for



Sweden but consigned 'to order.' The German Imperial Supreme Prize Court held that it had been shown that in the contract of sale for the goods it had been stated that the goods were for consumption in Sweden and that the Swedish Government prohibited export from Sweden of goods such as these." (*The Brage*, (1917). Garner, J. W., *Prize Law During the World War*, (1927), 573.)

4. "A Norwegian vessel carrying linseed oil (conditional contraband) from Rotterdam to Norway, consigned to order of named consignees living in Norway, was seized by a German warship. The claimants showed that the oil was to be used in Norway for the manufacture of edible fats which would not be consumed in Norway but which would be held there until the end of the war. The Norwegian Government prohibited the export of these products. The German Imperial Supreme Prize Court upheld the condemnation of the cargo as conditional contraband with a hostile destination. The court said that when goods were consigned to order there was a presumption of hostile destination although the ship was seized while on a voyage to a neutral port and that the existence of an export prohibition in the neutral country was not sufficient to overcome this presumption of hostile destination. The intention of the claimants was held to be not decisive." (Comment on the case of *The Norden*, (1918) in Hackworth, G. H., *Digest of International Law*, VII, 63.)

#### (6) *Navicerts*.

In order to avoid friction with neutral countries as much as possible, Great Britain in 1916 instituted a system of *navicerts* or *letters of assurance*. Under this system, neutral goods were given a kind of commercial passport before they were shipped, insuring in passage more freedom from interference by the British Contraband Control System.

1. "The term *navicert* (or *letters of assurance*) is applied to documents issued by officials of a belligerent state, indicating that the cargo of a vessel sailing from a neutral port corresponds to the manifest. Its purpose is to serve as a 'sort of commercial passport,' to facilitate the passage of the vessel and avoid the necessity of search of the cargo by the belligerent, but it does not convey any guaranty that the vessel and cargo will be free from seizure or interference." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 212.)

2. "This system, which first became operative in March, 1916, when it was made applicable to cargoes shipped from the United States to the Scandinavian countries adjacent to Germany, was in substance a system whereby particular consignments of goods were given what might be called a commercial passport before they were shipped; this passport, which derived its name from the code-word 'navicert,' insured the consignment an undisturbed passage." (Ritchie, H., *The "Navicert" System during the World War*, (Washington, 1938).)

3. "Navicerts were given a validity of two months extending from the date of issue up to the time of shipment. No fee was charged for their issue, but the applicant was expected to defray his share of the cost of the abbreviated telegrams to London where such inquiry was necessary. It was arranged by the Embassy that the navicert issued, or if need be a duplicate, should be furnished to the shipping company, in order that it might accompany the shipment, being removed by the boarding officer on the vessels' arrival at a British port. It was further arranged that the distinguishing mark and number of each navicert should be entered against the item of cargo on the ship's manifest covered by it, and British consular officers at ports in the United States were notified by the Embassy of the issue of navicerts, and instructed to exercise a general supervision over the entries so made. On the arrival of the vessel at a British port each consignment covered by a navicert could thus be readily identified by the boarding officer, and telegraphed to the Contraband Committee for purposes of verification and record." (Ritchie, H., *The "Navicert" System during the World War*, (Washington, 1938), 10.)

4. "Navicerts were worded as follows: 'As far as is at present known there would appear to be no objection on the part of the British Government to this consignment.'" (Ritchie, H., *The "Navicert" System during the World War*, (Washington, 1938), 1.)

5. "From the outset the system is said to have worked satisfactorily, and, as it attained fuller development, to have conferred advantages which have been shortly summarized as follows: Exporters and shipping companies were exposed to a minimum of delay and inconvenience; parties were spared the cost of insurance against risk of detention; quicker clearance could be given to vessels; objectionable shipments were to a large extent eliminated; British ports did not have to be encumbered by the discharge of

cargoes; while the system also enabled a statistical record to be maintained in advance of the imports of the receiving countries.” (Ritchie, H., *The “Navicert” System during the World War*, 10–1.)

6. “. . . About the time I was appointed the Consul-General of the United States came to see me, and he pointed out to me. ‘You say in your diplomatic representations to the United States that, after all, British goods suffer just as much as American goods from the blockade, and that we are not really injuring American goods and American traders in any way beyond the injury which the British trader suffers. That is not quite right, because the British trader can go to your War Trade Department before he makes any arrangements with regard to the shipping of the goods and he can obtain a license. . . . That is not the case in the United States. Cannot you do something to supply that want?’ We there-upon organized a system of Letters of Assurance, as it is called in the States. It is perfectly voluntary. Nobody need take out letters of assurance unless he wished to do so, but if he likes to go to our authorities there and make inquiries whether a particular ship is likely to meet with difficulty, he can obtain from those authorities in America letters of assurance, and then the goods, generally speaking, unless something exceptional intervenes, go through without any trouble or difficulty. That device has been of enormous importance in smoothing the difficulties which had before then existed with America, and it has been of equal importance in enabling us to know exactly what is going on in reference to exports from the United States to these neutral countries. It has enabled us, without any unfairness or injustice, to regulate the supplies to these neutral countries.” (Lord Robert Cecil, as Minister of Blockade in the House of Commons, Mar. 27, 1917. *Parliamentary Debates*, House of Commons, 5th ser., vol. 92, col. 254.)

7. “At the present time all goods which leave the United Kingdom [States] for European destinations, practically without exception, are covered by British ‘letters of assurance’ or equivalent documents. This means that the shippers consult the British authorities in the United States before forwarding their goods, and give certain guarantees that the ultimate destination of the goods is satisfactory. Then the ship proceeds on its way, and the cargo is examined either at Halifax, Kirkwall or Lerwick, to see that it is in order, and the enforced call at an intermediate port of course involves considerable danger to the ship, and great loss of time of time in the



manipulation of the cargo." (Consul General at London, Skinner, to Ambassador to Great Britain, Page, April 3, 1917, enclosure. *United States Foreign Relations*, 1917, *Supplement 2*, vol. II, 804.)

8. "In a discussion between the American Consul General at London and representatives of the British War Trade Intelligence Department 'It was agreed that the navicert system, which has been in operation for over a year and which is now thoroughly understood both by shippers and importers, should if possible be maintained. . . . It was considered that the proportion of navicerts which had been dishonoured was extremely small, probably no more than one in five hundred.'" (Memorandum of the British War Trade Intelligence Department. Comment in Hackworth, G. H., *Digest of International Law*, VII, 214. *United States Foreign Relations*, 1917, *Supplement 2*, vol. II, 803, 806.)

9. During negotiations between Great Britain and the United States concerning enemy commerce, the Joint Subcommittee on Export Licenses reported on May 14, 1917:

"Hitherto, the only control over exports from the United States has been carried out by the system of letters of assurance issued by the British Embassy in the case of shipments to Norway, Sweden and Denmark. These letters of assurance represent simply a statement made to such American exporters as may apply to the British Embassy that so far as the British Government is aware, and subject to new facts coming their knowledge subsequent to the issue of the letter, there is no objection to the shipment of the articles through the British naval patrols. Consequently, a letter of assurance is not a license but simply a facility and operates as a pass attached to the goods for the information of the examining officer at the British port of call, or the British naval patrol.

"In order that such a pass may be as certain and effective as possible applications for letters of assurance are referred by the British Embassy to London by telegraph in all cases where the character of the consignee or the amount of the shipment raises any doubt as to its ultimate destination. The letter of assurance thus merely aims at assuring the exporter a maximum of certainty that the goods will reach their destination without difficulty and with the minimum amount of delay in examination." (*United States Foreign Relations*, 1917, *Supplement 2*, vol. II, 849.)

10. ". . . There was also in existence at that time a system de-

signed for the convenience of honest Neutral traders whereby British Consular Officers in Neutral ports issued certificates upon being satisfied as to the character and destination of cargo intended, so far as appeared, for Neutral consumption. The fact that the British Consul-General issued a certificate for this cargo has been treated as tending to found a claim. I cannot give effect to that. It was a mitigation in favour of Neutrals of the stringent procedure which was being exercised and intended to be exercised by the British Government in the exercise of its rights as a belligerent, and the Neutral shipowner or shipper or consignee who took advantage of it, took advantage of it with the defects which were inherent in it, and subject to the defects which arose by the nature of the system out of which the giving of certificates arose." (*The F. J. Lisman*, 1919. Hackworth, G. H., *Digest of International Law*, VII, 215.)

### 7. *Neutral Goods on Enemy Ships.*

Neutral goods were safe on an enemy ship if they were not contraband. Most of the cases involving this principle arose out of captures made in the first months of World War I.

1. In *The Schlesien* case, 1914, the British Prize Court said that a submarine signaling device, American-owned, in a German merchant vessel was not "neutral goods" within the meaning of the Declaration of Paris. Therefore, the device was condemned. (*The Schlesien*, 1914, II Lloyd's Prize Cases, 92.)

2. In regard to a shipment of pepper on the German vessel *Schlesien*, the United States Department of State said: ". . . it appears that the shipment of pepper in question was made on a German merchant vessel from Batavia bound for Bremen, from which point the pepper was to be transshipped to Baltimore. Under the generally recognized principles of international law, this pepper, consigned to a neutral and shipped before the outbreak of hostilities, is not contraband and is not the lawful subject of confiscation or condemnation. But you are informed that the vessel in which the pepper was shipped, being a German vessel, is subject to seizure on the high seas by any of the countries with which Germany is at war, and if the vessel is or shall be captured, the part of your goods while not subject to confiscation, will necessarily undergo the delay and risks of the seizure of the vessel." (Counselor for the Department of State, Lansing, to Parrish Brothers, Inc., Aug. 1), 1914. Comment in Hackworth, G. H., *Digest of International Law*, VII, 11.)

3. The Acting Secretary of State Lansing in October 1914 inquired of the Ambassador to Germany Gerard, who in turn asked the German Government, whether prize court proceedings would be held in regard to American-owned cargoes on board British vessels sunk by German belligerent action. The reply was in the affirmative. (*United States Foreign Relations*, 1914, 330, 336.)

4. In two cases in 1915, *The Glitra* and *The Indian Prince*, German courts refused to compensate or restore to neutral owners of goods on enemy ships seized or sunk. (*The Glitra*, 1915, *United States Foreign Relations*, 1915, *Supplement*, 350, 572. *The Indian Prince*, 1915. *United States Foreign Relations*, 1915, *Supplement*, 520, 522.)

5. In the case of *The Marth-Bockhahn*, 1919, The French Conseil d'Etat said that non-contraband cargo owned by an American aboard a German vessel captured by the French should be released, since the owner had proved his neutral nationality. (*The Marth-Bockhahn*, 1919. Hackworth, G. H., *Digest of International Law*, VII, 11-12.)

## 8. *Non-Contraband.*

After the expansion of the contraband lists, little except hospital supplies were considered as non-contraband and exempt from capture. At times discussions even arose about the status of hospital supplies.

1. "While hospital supplies usually received a measure of consideration in transit from neutral to belligerent countries, other articles were from time to time allowed to be exported. Some neutral states, owing to weakness, protested and submitted to restrictions generally admitted to be beyond the limits of legality. Some neutral states, for reasons less evident, submitted to unjustifiable interference with commerce." (*United States Naval War College, International Law Situations*, 1933, 23.)

2. Some articles, besides hospital supplies, which were considered supposedly as of no utility in war were mentioned now and again in dispatches.

"Proclamation issued to-day requires that all articles exported to Holland be consigned to Dutch Government, diplomatic or consular offices, with permission of Ministry of Foreign Affairs, or Netherlands Overseas Trust, except printed matter, returned containers, worn clothing and personal effects, live animals not used



for food, sanitary earthenware, pottery and common earthenware, books, dolls, toys, wooden clock cases, slate and slate pencils, postage stamp and postcard albums. Proclamation apparently intended to permit free shipment of articles here mentioned." (Consul General at London, Skinner, to the Secretary of State, December 23, 1916. *United States Foreign Relations*, 1916, *Supplement*, 490.)

3. In a telegram to the Secretary of State the American Ambassador in Spain on September 22, 1914 said:

"In an interview yesterday morning His Majesty informed me confidentially condition of wounded soldiers, particularly in French hospitals where there are inadequate supplies, especially of bandages and absorbent cotton, was deplorable and expressed an earnest wish for our cooperation in relieving this situation. To that end he hopes that the United States and Spanish Ambassadors accredited near various European courts now at war will make a joint request for arrangements between countries of hospital supplies and the such supplies in transit on the high seas may be considered by them neither contraband nor conditional contraband of war but free. Please telegraph whether Department can see its way clear to give to our diplomatic officers concerned the instructions necessary to realize His Majesty's hope." *United States Foreign Relations*, 1914, *Supplement*, 831. United States Naval War College, *International Law Situations*, 1933, 23-4.)

4. The American diplomatic representatives in the belligerent countries were instructed by the State Department to communicate this request. A general agreement in principle was obtained. The German reply stated:

"Your circular September 24. The Foreign Office replies to joint request that No. 28, paragraph 1, of the German prize ordinance of September 30, 1909, already provides that articles serving exclusively to aid the sick and wounded shall not be treated as contraband and may be requisitioned subject to payment compensation only in case of urgent military necessity and when their destination is to the territory of the enemy or to territory occupied by the enemy or to the armed forces of the enemy." (*United States Foreign Relations*, 1914, *Supplement*, 835. (United States Naval War College, *International Law Situations*, 1933, 24.)

5. The French Government stated:

"While appreciating the humanitarian attitude of the United States Government, the French Government does not think the moment propitious for agreement between belligerents, even on a subject which by its character could be placed beyond reach of

conflict. Experience of contempt which certain belligerents show for international conventions to which they have agreed gives grounds for apprehension that they would not observe a new agreement nor execute its provisions as soon as it was to their advantage not to do so. The French Government recalls that definition of objects mentioned in Article 29 of the Declaration of London was summarily made in the general report at the London conference by the drafting committee, and it was thus agreed that the immunity established under Article 29 applied to drugs and various medicines. The French Government adds that while it might be a delicate matter to be more precise and extend obligations of belligerents during war beyond where they were fixed in time of peace, nevertheless it would not refuse to study the suggestions of the American Government to draw up a list of drugs and medicines whose character as 'articles serving exclusively to aid the sick and wounded' shall be closely defined." (*United States Foreign Relations*, 1914, *Supplement* 836. *United States Naval War College, International Law Situations*, 1933, 24.)

6. "Since the beginning of the present war, the American Red Cross has invited contributions of money and supplies with which to aid the wounded and suffering of all the belligerents. We have shipped to the Red Cross societies of each belligerent hospital supplies contributed to us for that purpose. We have found no difficulty in sending such article to the Entente Allies. We have had to obtain permits from Great Britain for the shipments to the Red Cross of the Central powers. Until September 1915, there was substantially no delay in the granting of these permits by Great Britain. Since that time, we have had much difficulty in securing them, and the supplies donated in kind and designated for the use of the Central powers have accumulated in our warehouses in New York. A permit was granted for only one shipment since that time—in January of this year. Through your Department, we are now in receipt of a communication from the British Government, announcing that it does not intend to permit any further shipments, unless it is a shipment to our own hospital units, in a territory of the Central powers. This exception amounts to no concession, for the reason that as the British Government was advised in August last, after the first of October, for lack of funds, we were able to maintain no hospital units in any of the belligerent countries. The authorities of the American Red Cross believe that under the Geneva convention, to which the United States and all the belligerent powers are signatories, the United States has the treaty right to insist that

articles serving exclusively to aid the sick and wounded in the form of hospital supplies, shipped by the American Red Cross to the Red Cross of the Central powers, shall not be declared contraband, but shall be allowed safe-conduct to their destination.” (Ex-President Taft, then chairman of the central committee of the American Red Cross to the Secretary of State, May 8, 1916. *United States Foreign Relations*, 1916, *Supplement*, 948. United States Naval War College, *International Law Situations*, 25.)

7. *Secretary of State Hull before the Senate Committee on Foreign Relations*, 1936.

1. “The next thing that seemed to have been demonstrated by the World War was that, unlike preceding periods and preceding wars of consequence, this was not a war between the military forces of nations alone, not a war between soldiers; it was a war between the combined populations, civil and military. It was not a war involving the use of military implements and instruments alone, but it was practically a test of the economic strength as well as the military strength of the nations.

“The result was that the belligerent in control of the seas said, to all practical intents and purposes, ‘We have to make absolute contraband what has been called conditional contraband in the past. We have practically to prevent commerce between neutrals and our enemies either directly or indirectly.

“The result was that the doctrine of continuous voyage was expanded to cover virtually all commerce. The nation in control of the seas, before the war ended, dominated almost every dollar’s worth of commerce between neutrals and any part of Europe. That was through the expanding of the whole doctrine of contraband, conditional contraband, and also, as I have said, the doctrine of continuous voyage, and furthermore, through curtailing other rights of neutrals. In other words, nearly all of what had theretofore been the ordinary rules of neutrality and neutral rights were more or less set aside, so that when the war ended there was in several respects virtual chaos so far as neutral rights were concerned.”

“... When the United States entered the war it issued instructions for the Navy, June 30, 1917, which set forth a general list of contraband which may be considered almost as inclusive as the British list of 1916. In this American contraband list there was no expressed distinction between absolute and conditional contraband. Destination was the deciding factor.”



"... I should like to say that the situation when the war ended apparently was that the whole law . . . on the subject of contraband, absolute and conditional, had been merged into the one subject of contraband, absolute. The question of destination to some extent figured . . ." (Testimony by Secretary Cordell Hull before the Senate Committee on Foreign Relations on the proposed Neutrality Act of 1936, Jan. 10, 1936. Hearings before the Senate Committee on Foreign Relations, 74th Congress, 2d session, Jan. 10, 1936 on S. 3474 regarding Neutrality, 11-2, 38, 39.)

### 9. *Harvard Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War, 1939.*

This draft convention is an attempt to resolve the conflict between neutral and belligerent rights. The principle underlying this proposal is as follows: on the one hand grant to the belligerents a broadened conception of blockade, and on the other hand give the neutrals more adequate guarantees for the protection of legitimate inter-neutral trade. The hope for result, of course, is less interruption of the commercial life of the world in time of war.

This plan grapples, therefore, with the difficult problems of continuous voyage and ultimate destination. To solve these questions, the draft convention proposes that the neutral states accept new duties in regard to the supervision of goods received in their ports but intended to pass on to a belligerent. Trade between two neutrals is to be free and is to be protected by a certificate system for which both neutral and belligerent states are to be responsible. Under this certificate system contraband lists would be unnecessary, eliminating an objectionable feature of past practices in time of war.

#### (1) *The Draft Convention, 1939.*

Article 40. "Except as otherwise provided in this Convention, a belligerent may not interrupt trade in neutral vessels between two neutral ports."

Article 41. "A neutral State may issue certificates of neutrality in accordance with the rules laid down in Annex II to this Convention."

Article 42. "(1) Prior to the clearance of a vessel with a certificate of neutrality from its territory, a neutral State shall give a public notice of departure containing:

"(a) The name of the vessel, its tonnage, time of departure, approximate route, destination, probable time of arrival thereat and general description of the ship and its cargo;

"(b) If the vessel is convoyed, an adequate identification of the convoying warship or warships.

"(2) if the announced departure of the vessel is delayed, or if other announced details are altered, a corrected notice shall be issued.

"(3) A certified copy of the notice shall be given to the master of each vessel named therein.

"(4) A neutral State may also give publicity by radio to notices of departure. Upon the request of a belligerent, a neutral State shall use the radio facilities at its disposal to bring to the knowledge of belligerent warships or aircraft at sea notices of departure, but such messages may not be sent in code."

Article 43. In regard to neutral convoys.

Article 44. Convoyed neutral ships with Certificates of Neutrality to be painted white and carry certain lights, etc.

Article 45. Neutral state to prevent uncertified vessels from leaving with similar paint and markings.

Article 46. Penalties for neutral ships violating these regulations.

Article 47. "(1) A quota limitation is required for imports into a neutral State if demanded by a belligerent in accordance with the provisions of this article.

"(2) A belligerent may demand that a neutral State publish monthly data as to its imports, their amount, value, disposition or ultimate utilization, and data as to its exports, their amount, value and destination, if there are being imported into the neutral State goods which

"(a) are publicly listed by any of the belligerents as to use in war; and

"(b) are of a kind which the enemy of the demanding belligerent imports directly or indirectly; and

"(c) are either imported into the neutral State for exports in their original or in a processed state, or imported

in amounts exceeding normal peace time imports, taking into account normal expansion not due to supplying war demands in belligerent markets.

“(3) A neutral State shall at once proceed with the publication as demanded.

“(4) However, if the neutral State does not agree that factual conditions exist justifying the demand, it shall so notify the demanding belligerent. At the same time it shall designate one of its nationals who, with a person designated by the belligerent, shall choose a national of a third State; and these three persons shall constitute an arbitral board to determine whether the factual conditions exist justifying the demand. If a majority of the board decides that the belligerent has made out a *prima facie* case under paragraphs (a), (b), and (c) of section (2) of this article, the neutral State shall continue the publication as demanded; if a majority of the board decides that the belligerent has not made out such a *prima facie* case, the neutral State may cease publication.

“(5) If the belligerent is not satisfied by the neutral State’s published statements that goods imported by the neutral State are not reaching its enemy in their original or in a processed state, it may notify all neutral States that it demands the fixing of a quota in accordance with Annex III to this Convention.

“(6) The publication of data as required under section (2) of this article may be dispensed with if the neutral State consents to the fixing of a quota under section (5).”

Article 48. “(1) A neutral State may also issue a certificate of neutrality to a vessel covered by an agreement made by the neutral State with both belligerents.

“(2) Such an agreement may specify the commodities and define the quantities thereof which may be shipped from the neutral State by private persons to a belligerent or from a belligerent to a neutral State under guaranty of safe passage.

“(3) Such an agreement may be made for specific voyages or for specified periods of time. It may provide for cancellation upon notice in case of fraud or violation of its terms.

“(4) Such an agreement may specify that certificates of neutrality may be issued even though the shipment be made in a vessel flying a belligerent flag.

“(5) Beyond supervision of leading and certification, the neutral State is not responsible for the execution of such an agreement.”

Article 61. “(1) If a vessel does not display the distinctive colors and markings required of a certified vessel under Article 44, or fails



to produce a certificate of neutrality, and if the belligerent as a result of visit and search has reasonable grounds for belief that the vessel or its cargo is subject to condemnation or preemption, the belligerent may capture the vessel and conduct or send it to one of its ports for prize proceedings. If to conduct or send the captured vessel to port would involve danger to the safety of the captor or to the success of the operations in which he is engaged at the time, the captured vessel may be destroyed subject to compliance with the rules laid down in Article 54. In such cases prize proceedings shall be held on the basis of the ship's papers and other lawful evidence."

Article 63. "A prize court shall be bound by the following rules:

"(a) A vessel which intended to run a blockade, may be condemned together with its cargo."

"(b) Cargo destined for a blockaded port by sea, may be condemned; the vessel may also be condemned if the destination of the cargo was known to the owner, charterer or master of the vessel."

"(c) Cargo destined for belligerent territory either directly or through a neutral port, may be condemned in so far as it is composed of arms, ammunition or implements of war, or of other goods shipped in violation of a neutral State's prohibition under Article 11. If more than half of the cargo by value, weight, volume or freight is composed of goods which may be condemned, the rest of the cargo and the vessel are similarly subject to condemnation."

"(d) Any commodity in a cargo destined for a neutral State upon whose imports of that commodity a quota has been fixed under Article 47, but not included within a portion of the quota allocation to the State from which the commodity was shipped, may be condemned."

"(e) Enemy vessels and such parts of their cargo as are of enemy ownership may be condemned; the disposition of neutral cargo is not affected by the fact that it is carried in a belligerent vessel, but neutral cargo belonging to the owner, charterer, or master of a vessel which, under Article 64 or 65 a belligerent may treat as an enemy vessel, may be condemned."

"(f) Cargo destined for unblockaded belligerent territory or for a neutral port affording convenient access to belligerent territory and not subject to condemnation under preceding paragraphs of this article, may be preempted by the capturing belligerent upon payment of the market price current in its territory on the date of the arrival of the prize in port, plus ten per cent."

“(j) Enemy ownership or origin of cargo on a neutral vessel does not affect the disposition of the cargo: ‘free ships make free goods.’”

“(m) Postal correspondence on a captured neutral vessel is inviolable, unless it is being carried to or from a blockaded place on a vessel which is subject to condemnation for breach of blockade.”

“(n) Postal parcels may be treated as cargo.” (*Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School, 1939). 33 *American Journal of International Law, Supplement*, 1939), 181-4, 187-9.)

(2) *Draft Convention Comments.*

(a) *Contraband in general.* “Under the Declaration of London of 1909, neutral vessels were free to trade with other neutral States but subject to the application of the doctrine of continuous voyage if the cargo contained absolute contraband. Neutral vessels were also free to trade with belligerent ports, if the ports were not blockaded and if the cargo contained only non-contraband goods. Neutral vessels carrying contraband and destined for a belligerent port or carrying non-contraband and destined for a blockaded port were subject to capture.”

“Under the practices prevailing in the War of 1914-1918, the first type of trade was severely limited by the extension of the doctrine of continuous voyage into that of ultimate destination, its application to conditional as well as to absolute contraband, and the expansion of the contraband lists to a point at which the free list became practically non-existent. The extension of blockade principles to neutral coasts and the establishment of war zones on the high seas further crippled this trade. The second type of trade—from neutral States to belligerents—was practically eliminated by the same extensions of contraband lists. Some modifications in favor of neutral trade were introduced by agreements permitting neutrals to import freely certain goods on agreeing to supply belligerents with certain other goods.”

“Under this Draft Convention, trade between neutrals would receive maximum safeguards. From the earliest times the problem has been to reconcile conflicting economic interests of neutrals and belligerents. A belligerent naturally desires to prevent his enemy from obtaining supplies of any kind. A neutral naturally desires to continue his trade without any restriction resulting from the war of other States. The rules of contraband, blockade, etc., grew up from an attempt to reach a compromise between these conflicting

interests." (*General Comment, Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School, 1939). 33 *American Journal of International Law, Supplement*, (1939), 488.)

(b) *On contraband lists*. "The history of the law of contraband of war is particularly interesting. For more than two centuries it has been agreed that actual arms and ammunition fall within the contraband category. But as soon as one leaves a very narrow list, differences of opinion appear. An analysis of the treaty provisions during the last one hundred and fifty years shows the wide disparity of definitions of contraband upon which States from time to time have agreed."

"Although at the present time it is recognized that there is a distinction between goods absolutely contraband and goods conditionally contraband, little note has been taken of the fact that this distinction is, as a matter of general practice, very recent. There is not a single bipartite treaty concluded in the last one hundred and fifty years which makes a clear distinction between the two kinds of contraband and there are only two treaties which suggest any such distinction at all. A complete analysis of the national laws and regulations has not been made, but the indications are that even in naval instructions and the like, the distinction is of comparatively recent appearance. The distinction was fully recognized at the Second Hague Conference in 1907 and was the basis for the rules on this subject drawn up in the Declaration of London. Earlier examples of an acknowledgment of the distinction may, of course, be found, and the idea itself is usually traced to the classifications of Grotius."

". . . it cannot be said that a clear distinction between goods absolutely and conditionally contraband has any deep historical roots in the development of the subject."

"There has never been a general agreement among the States of the world as to just what articles are contraband. From the seventeenth century on, many States have taken the position that a contraband list might properly be proclaimed by a belligerent during the course of a war and that the belligerent was subject only to general limitations in deciding upon the specific articles which were to be included in such a list."

"As is well known, during the War of 1914-1918, contraband lists were enormously extended to a point at which they became practically all-inclusive; the distinction between goods absolutely



contraband and goods conditionally contraband was practically abandoned by a number of States, although the United States support its continuance."

The Harvard Draft Convention contains no contraband lists, because it would have no useful purpose. "The attempt made in the Declaration of London to draw up one list of goods absolutely contraband and another list of goods conditionally contraband and a third free list, proved to be of practically no value, thus supporting the view of the United States at the Second Hague Conference that it is impossible 'to formulate a list of articles on contraband that would continue satisfactory for a period of years.'" (*General Comment, Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School, 1939). 33 *American Journal of International Law, Supplement*, (1939), 488-9, 498-9.)

(c) *On destination of neutral cargo*. "On the other hand, the distinction as to the destination of neutral cargo—on the one hand to the territory of a belligerent and on the other hand to the government or the armed forces—is very old and it is easy to find in the early practices the roots from which the modern notions about goods conditionally contraband have sprung." (*General Comment, Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School, 1939). 33 *American Journal of International Law, Supplement*, (1939), 498.)

(d) *On plan of Harvard Draft Convention in regard to contraband*:

"At the Second Hague Conference, the British Government proposed that the principle of contraband of war be abolished."

"The proposal failed because of the opposition of Germany, France and Russia, but twenty-five States supported the proposal, with Japan, Panama, Rumania and Turkey not voting. The opposition to the British proposal, as expressed by the German delegate, was based on the fact that the suggested abolition of contraband was linked with a new description of a type of unneutral service which was said to place a greater restriction on neutral commerce than did the traditional law of contraband."

"Montenegro also opposed the British proposal and the United States likewise voted against it. The opposition of the United States, however, rested upon special grounds and does not seem to have been comparable to the opposition of Germany, France and Russia."

"In view of the long history of conflict attending the subject of contraband and in view of the apparent impossibility of defining it in a satisfactory way, it is believed that the only solution lies in reviving the British proposal in 1907. However, just as the British proposal failed in 1907, any similar proposal would probably also fail unless it took account of the traditional and inevitable point of view of belligerents who will never tolerate the free shipment of essential war materials to the enemy if they have the physical power to prevent it. The proposals contained in this Draft therefore contemplate some extensions of the belligerent right of blockade."

"With the development of submarines and aircraft and also with developments in the use of mines, it is now possible even for States which are not dominant maritime Powers to blockade enemy coasts. There will, of course, be situations in which the superior power of one belligerent will make a blockade by the other State ineffective, but obviously a convention dealing with neutral rights can not guide itself by the principle of equalizing unequal belligerent power."

"There would seem to be very obvious advantages to neutral trade if trade were free except to blockaded places even though notions of blockade be somewhat broadened. It is believed that a large part of the difficulty will be removed if adequate guarantees are offered for the protection of *bona fide* inter-neutral trade. This makes it necessary to grapple with the extremely difficult problem of continuous voyage and ultimate destination. This is not, however, an insoluble problem. If neutral States recognize that by the assumption of additional duties in regard to exports to belligerents, they can achieve a large measure of freedom for their sea-borne commerce, the result should be that war would involve less interruption of the commercial life of the world than is the case under the existing rules of international law and existing situations which make breaches of that law all too frequent." (*General Comment, Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School, 1939). 33 *American Journal of International Law, Supplement*, (1939), 499-500.)

(e) *Summary of this Draft Convention's system.* "Trade between two neutral States is free and is protected by a system of certificates for the accuracy of which both neutral and belligerent States make themselves responsible. As a further protection such vessels may be convoyed."

"Neutral States must accept new burdens in regard to the supervision of goods received in their ports but intended to pass in transit to a belligerent."

"In Article 48 it is contemplated that a neutral State may enter into a tripartite agreement with both belligerent parties relative to certified and protected trade with the belligerents in specified commodities of definite amounts; instances of somewhat analogous agreements may be found during the War of 1914-1918."

"In certain cases quotas may be established to limit the imports of goods by a neutral where continuous voyage to a belligerent territory is alleged by a belligerent."

"If a neutral vessel wishes to carry goods to a belligerent port or if it desires to carry to a neutral port a cargo which may not under the rules be certified, the venture is wholly at the risk of the neutral individual, subject to Article 63, which in certain cases limits the belligerent right to one of pre-emption. This device has been utilized frequently in the past, notably in the Jay Treaty of 1794 between the United States and Great Britain, as a means of solving the quandary created by the inability to agree upon a contraband list. In all such cases, however, there must be definite assurance regarding the safety of the lives of passengers." (*General Comment, Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School, 1939). 33 *American Journal of International Law, Supplement*, (1939), (500-1.)

(f) *On air traffic*. "In certified and convoyed aircraft the neutral can send to another neutral all postal correspondence; all passengers who are not in belligerent service; and all cargo and parcel post which have a *bona fide* ultimate neutral destination, subject to a possible quota limitation. In certified and convoyed aircraft the neutral can also send to a belligerent anything or any persons if both belligerents agree."

"In uncertified aircraft, the neutral may send any persons or cargo to another neutral or to a belligerent subject to the risk of interception by a belligerent."

"It is obvious, however, that important quantities of goods considered contraband of war may be carried by air." (*General Comment, Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War*, (Harvard Law School, 1939). 33 *American Journal of International Law, Supplement*, (1939), 504, 757.)



## 10. *World War II.*

Documents reveal that at the beginning of World War II belligerent treatment of contraband of war was to be patterned after the practices adopted in the period 1916-1918 in World War I.

In varying ways, the usual rules were stated by the belligerents: 1) enemy goods are safe on a neutral ship if they are not contraband, 2) neutral goods are safe even on an enemy ship if they are not contraband, and 3) neutral goods are safe on a neutral ship but only if they are not contraband.

Some countries stated that all goods are contraband, absolute contraband. Other countries published elaborate lists of contraband, making the distinction between absolute and conditional. But in reality, most goods were treated as being absolute contraband, for in total war the distinction between absolute and conditional could not be maintained for long.

The doctrine of continuous voyage, as a result, was now considered as being applicable to most goods shipped from one neutral state to another, there being no real distinction between absolute and conditional contraband.

The navicert system was instituted immediately by Great Britain and was supplemented by a system of mailcerts. Unlike the experience in World War I little or no objection was raised to this procedure by the neutral states.

Cases involving neutral American ships and cargoes cannot be found because of the Neutrality Acts which prohibited the voyage of American ships or the carriage of American-owned cargoes into defined danger zones.

As the war progressed most of the nations of the world became involved in the war as belligerents. The few neutral states that were left could not trade

with each other without first submitting their ships and cargoes to rigid examination in order to gain navicerts.

1. "... Now it must be clear . . . in particular in the light of the problems and controversies raised by the World War, that there is at present no generally agreed prize law in regard to some of its most important aspects. The controversy as to the legality or otherwise of the conduct of war in this sphere by the Allied Powers is still raging. The various Governments have since maintained their respective, and widely divergent, positions. It would not therefore, it is believed, be consistent with the function of an impartial science of International Law to maintain that there exists at present a working body of generally agreed rules of prize law, in particular in its bearing upon the rights and duties of neutrals. Historically prize law has been, in this matter, a compromise between two conflicting principles: the freedom of neutral trade and the right of the belligerent to prevent such commerce with the opposing party as might be of military advantage to the latter. International Law has not evolved any overriding principle reconciling these claims in cases when they show a tendency to conflict. The compromise has frequently been the function of the relative military and political strength of the belligerents and neutrals. This absence of an overriding principle shows itself in the hitherto unsolved difficulty, which proved of crucial importance during the World War, of answering the question as to whether the belligerents or the neutrals ought to bear the brunt of the changed conditions of modern warfare." (Oppenheim's *International Law*, (6th edition, by Lauterpacht, 1940), 736-7.)

2. "... His Majesty's Government in the United Kingdom intend to use their best endeavours to facilitate innocent neutral trade so far as is consonant with their determination to prevent contraband goods reaching the enemy. They will be compelled to use their belligerent rights to the full, but they will at all times be ready to consider sympathetically any suggestions put forward by neutral governments designed to facilitate their bona fide trade.

"In order to secure their objects, His Majesty's Government have established contraband control bases at Weymouth, Ramsgate, Kirkwall, Gibraltar and Haifa. Vessels bound for enemy territory or neutral ports affording convenient means of access thereto are urgently advised to call voluntarily at the appropriate base, in order that their papers may be examined, and that, when it has

been established that they are not carrying contraband of war, they may be given a pass to facilitate the remainder of their voyage. Any vessel which does not call voluntarily will be liable to be diverted to a Contraband Control base if an adequate search by His Majesty's ships at sea is not practicable.

"Every effort will be made to expedite the examination of vessels, particularly those which call voluntarily for the purpose." (British Ambassador to the United States, Lord Lothian, to Secretary of State Hull, Sept. 10, 1939. Hackworth, G. H., *Digest of International Law*, VII, 7-8.)

3. "1. We have noted the statement in the Embassy's note of September 10, that it is the intention of the British Government 'to use their best endeavors to facilitate innocent neutral trade so far as is consonant with their determination to prevent contraband goods reaching the enemy.'

"2. This Government on its part desires that its trade with neutral countries proceed with the least possible disturbance due to the existence of a state of war in Europe. As regards trade of neutral countries (in particular the so-called northern neutrals) with the United States, it should be fully understood, as has already been publicly announced, that this Government reserves all rights of the United States and its nationals under international law and is not to be understood as endorsing any principle of interference with trade of genuine neutral character." (Department of State to the British Embassy, Sept. 1939, as quoted in a telegram from Secretary of State Hull to Ambassador Kennedy on Sept. 29, 1939. Hackworth, G. H., *Digest of International Law*, VII, 8.)

4. "... The Ministry of Economic Warfare is concerned in the first instance with only two questions: the character of the goods and the character of the consignee."

"If . . . the goods are of such a nature that there is danger that the goods might be sent on to Germany and thus give comfort and assistance to the enemy, either by the export of the goods themselves or by the release of other commodities for export to Germany, then the goods are submitted to closer inspection and the character of the consignee comes into question. If the character of the consignee is such that the British Government is satisfied that he will not ship the goods to Germany, then the goods are released. This is accomplished sometimes by a guarantee given by the firm, sometimes by a guarantee given by the neutral country to which the goods are consigned, sometimes by both. The fact however that



such guarantees are given is not in itself sufficient in many cases to cause the release of the goods. . . ." (American commercial attaché in Great Britain, Dye, to Secretary of State Hull in regard to British practice in detaining cargoes destined for Europe, Dec., 1939. Hackworth, G. H., *Digest of International Law*, VII, 8.)

(1) *Contraband Lists, Absolute and Conditional.*

1. "The Italian War Law of July 1938 continues to adhere to that country's abandonment of the distinction between absolute and conditional contraband. . . ." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 41.)

2. Article 22 of the German Prize Law Code of August 28, 1939 declared:

"(1) To be considered as contraband (absolute contraband) are all articles and materials which:

"1. Directly serve the land, naval or air armament and

"2. Are consigned to the enemy territory or the enemy forces."

A few days after the outbreak of war, article 22 was changed, reading as follows:

"The following articles and materials will be regarded as contraband (absolute contraband) if they are destined for enemy territory or the enemy forces:

"*One.* Arms of all kinds, their component parts and their accessories.

"*Two.* Ammunition and parts thereof, bombs, torpedoes, mines and other types of projectiles; appliances to be used for the shooting or dropping of these projectiles; powder and explosives including detonators and igniting materials.

"*Three.* Warships of all kinds, their component parts and their accessories.

"*Four.* Military aircraft of all kinds, their component parts and their accessories; airplane engines.

"*Five.* Tanks, armored cars and armored trains; armor plate of all kinds.

"*Six.* Chemical substances for military purposes, appliances and machines used for shooting or spreading them.

"*Seven.* Articles of military clothing and equipment.

"*Eight.* Means of communication, signaling and military illumination and their component parts.

"*Nine.* Means of transportation and their component parts.

"*Ten.* Fuels and heating substances of all kinds, lubricating oils.

"*Eleven.* Gold, Silver, means of payment, evidences of indebtedness.

"*Twelve.* Apparatus, tools, machines and materials for the manufacture or for the utilization of the articles and products named in numbers one to eleven."

On Sept. 12, 1939, the following declaration was made by the German Government:

"The following articles and materials will be regarded as contraband (conditional contraband) subject to the conditions of article 24 of the Prize Law Code of August 28, 1939 (Reichsgesetzblatt part one page 1585):

"Foodstuffs (including live animals) beverages and tobacco and the like, fodder and clothing; articles and materials used for their preparation or manufacture." (Department of State *Bulletin*, I, No. 13, Sept. 23, 1939, 285.)

3. Great Britain proclaimed the following contraband list in Sept. 1939:

#### "SCHEDULE I

##### "*Absolute Contraband*

"(a) All kinds of arms, ammunition, explosives, chemicals, or appliances suitable for use in chemical warfare and machines for their manufacture or repair; component parts thereof; articles necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.

"(b) Fuel of all kinds; all contrivances for, or means of, transportation on land, in the water or air, and machines used in their manufacture or repair; component parts thereof, instruments, articles, or animals necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.

"(c) All means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines, or documents necessary or convenient for carrying on hostile operation; articles necessary or convenient for their manufacture or use.

"(d) Coin, bullion, currency, evidences of debt; also metal, materials, dies, plates, machinery, or other articles necessary or convenient for their manufacture."

## "SCHEDULE II

*"Conditional Contraband"*

"(e) All kinds of food, foodstuffs, feed, forage, and clothing and articles and materials used in their production." (Department of State *Bulletin*, I, No 12, Sept. 13, 1939, 250-1. Canada adopted the same list, and France had a similar list.)

4. In the course of giving a decision in the case of *The Minna*, the German Prize Court of Hamburg on December 14, 1939 said:

"... It may be considered as correct that the Zellstoff-Werke of Reval manufacture exclusively such unbleached strong sulphite woodpulp and that this material normally serves in general for the manufacture of paper at paper mills. It is also correct that the use of such unbleached strong sulphite woodpulp for the manufacture of explosives is not possible without further processing. This, however, is not decisive. Mr. Almberg himself admits that theoretically such woodpulp may be used in the manufacture of explosives by dissolving the woodpulp, treating it with chloride, bleaching it and then drying it."

"This processing, termed by Mr. Almberg a 'theoretical possibility' does not, however, lie beyond the limits of practicability. The convincing opinion of an expert, Dr. Gaertner, scientific adviser of the State Chemical Institute of Hamburg proves that in practice such reprocessing is being carried out to a great extent. . . ."

"In any case, whether or not it is a 'substance for the manufacture of munitions, explosives, et cetera' within the meaning of Nos. 12 and 2 of the German list of absolute contraband can by no means be determined by the question of whether the material under investigation is *especially* suitable or even *intended* for such processing. Just as little may economic considerations as to its suitability play a decisive part, especially since in war-time special conditions would be considered uneconomic but which are unavoidable during war. For the Prize Court the only criterion is the *objective adaptability* ('*objektive Verwendbarkeit*') of the material under consideration to the manufacture of articles and products listed as absolute contraband." (*The Minna*, 1939. *The Minna's* cargo of woodpulp, shipped from Estonia and consigned to the United States, was condemned as absolute contraband because *The Minna* intended to stop for coal in England, enemy territory. Hackworth, G. H., *Digest of International Law*, VII, 27-8.)



5. On October 3, 1939, the Foreign Ministers of the American Republics in a meeting held in Panama resolved:

"1. To register its opposition to the placing of foodstuffs and clothing intended for civilian populations, not destined directly or indirectly for the use of a belligerent government or its armed forces, on lists of contraband." (*Report of the Delegate of the United States of America to the Meeting of the Foreign Ministers of the American Republics, Held at Panama, September 23-October 3, 1939.* Department of State Conference Ser. 44, 1940, 58-9. Hackworth, G. H., *Digest of International Law*, VII, 27.)

6. "Objections to the British and French contraband list of 1939 were set forth by the Netherlands Government in notes to the Governments of the two countries in which it was asserted that by the inclusion, in addition to specified articles, of 'articles necessary or convenient for their use; materials or ingredients serving in their manufacture' and 'articles necessary or convenient for the production or use of such materials or ingredients,' the field of goods considered contraband could be extended to the infinite."

"The distinction between absolute and conditional contraband was said to be based upon reason and to have long been recognized by international law, and it was protested that under these lists articles indispensable to the life of the whole nation in matters unrelated to the military apparatus could be treated as absolute contraband. It was insisted that the limitations imposed by international law, which directly affected the rights and interests of neutrals, should not be lost sight of and that, since the belligerent right to seize contraband was an exception to the principle of freedom of the seas, it should be interpreted in a restrictive manner." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 26.)

7. "The British Government replied on Nov. 20, 1939 to the Netherlands Minister in London stating that the list of absolute contraband could not be regarded as unduly extensive in view of the number of articles now regarded as of direct military use and particularly in view of the certainty that any such articles imported by Germany would be intended for military purposes. Adherence to the distinction between absolute and conditional contraband was promised. It was asserted:

"'. . . It is the undoubted right in international law of a belligerent Power to declare what articles it will consider as contra-

band, within the general definition of contraband as being any article of use for the prosecution of the war.'” (Comment in Hackworth, G. H., *Digest of International Law*, VII, 26.)

8. In the case of the *Hakosaki Maru*, the French Prize Council “held on May 22, 1940 that food (conditional contraband) destined to Germany should be condemned as conditional contraband having hostile destination in view of the extent to which the state controlled the distribution of food.” (*Hakosaki Maru*, 1940. Comment in Hackworth, G. H., *Digest of International Law*, VII, 70.)

9. In Great Britain in the case of *The Alwaki and Other Ships*, 1940, the British Prize Court arrived at a conclusion similar to that in *The Hakan*. For *The Hakan* see above under *World War I*. (*The Alwaki and Other Ships*, 1940. I *Lloyd's Prize Cases* (2d), 43, 46. See also Hackworth, G. H., *Digest of International Law*, VII, 68.)

10. “In declaring its contraband list in 1940, the Italian Government referred to the fact that the British and French lists went beyond the list announced in the Italian Laws of War of July 8, 1938, and it included all articles on the British and French lists.” (Comment in Hackworth, G. H., *Digest of International Law*, VII, 26.)

11. “The reply of the Netherlands Minister, Jan. 12, 1940, while recognizing that ‘the centralization and subordination of all the means of the nation to the purposes of war may involve certain consequences’ as to rules regarding contraband which originated in a different epoch, stated that ‘These considerations . . . cannot justify the treatment as absolute contraband of goods or of materials which by their nature can serve the needs of the civil population as well as those of the armed force.’ While refraining from expressing an opinion on the statement in the British note (quoted *ante*), the Netherlands Minister expressed the belief that such an extreme extension as that adopted by Great Britain and France had the effect of nullifying article 2 of the Declaration of Paris, under which the neutral flag covers enemy goods with the exception of contraband, ‘by making almost all imaginable goods fall within the category of contraband.’” (Comment in Hackworth, G. H., *Digest of International Law*, VII, 27.)

12. “In 1940 the German Prize Court at Hamburg held that sawed timber and telegraph poles were contraband because they could be used in the construction of military equipment.” (Comment in Hackworth, G. H., *Digest of International Law*, VII, 28.)

(2) *Destination—Continuous Voyage.*

1. "The French instructions of Mar. 8, 1934 provide in article 46 that articles of conditional contraband destined for the use of the armed forces or administration are subject to condemnation whether or not the transporting vessel is destined for a neutral port or the cargo is documented for such port. An absolute presumption of enemy destination is established when the goods are consigned to an enemy agent, whether in an enemy or neutral port, or are destined to an enemy fortified place or base of supply (art. 48). When the enemy government has taken measures to requisition or to control the distribution of certain goods, a rebuttable presumption is established (art. 47) in the following cases: (1) when the goods are documented to an enemy port; (2) when they are documented to a neutral port and the vessel is first to touch at an enemy port or meet the enemy forces; (3) when they are documented to a neutral port which habitually serves as a port of transit to the enemy country and the goods are consigned to order or the consignee in the neutral country is not named." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 41.)

2. Italian War Law of July 1938. "A hostile destination is considered (art. 161) to be the enemy forces or territory belonging to or occupied by the enemy. A rebuttable presumption of such destination is established when the documents indicate that the goods are consigned to the enemy forces or are to be disembarked in an enemy port or one occupied by its forces. The presumption applies when the goods are destined to a neutral port but the vessel approaches or touches at a port of or occupied by the enemy, or meets the enemy armed forces before arriving at the neutral port." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 41.)

3. German Prize Ordinance of August 28, 1939, article 24 (2) :

"On condition of reciprocal procedure on the part of the enemy the articles and materials named in par. 1 [conditional contraband] will not be considered as contraband if they are to be discharged in a neutral port." (Hackworth, G. H., *Digest of International Law*, VII, 42.)

4. "In the case of the *City of Joliet* the French Prize Council on May 22, 1940 held that copper consigned 'to order' to the neutral port of Antwerp should be condemned, since its ultimate German destination was to be presumed from a consignment 'to order' to the neutral port of Antwerp should be condemned, since its ultimate German destination was to be presumed from a consignment 'to order' to a port serving as a port of transit for Ger-



many." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 41.)

5. "A cargo of hides shipped before the outbreak of war in 1939 from East Africa to the Italian port of Trieste and consigned 'to order' for the Yugoslav branch of a firm in Czechoslovakia was held by the French Prize Council, in the case of the *Edda*, on May 15, 1940, to be contraband with an enemy destination. The Prize Council referred to Czechoslovakia as territory under enemy occupation and held that the presumption of enemy destination arose from the consignment 'to order' to a neutral port serving as a normal port of transit to enemy territory." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 41.)

6. "In the case of the *Tormes* the French Prize Council held on June 5, 1940 that a cargo of lemons shipped 'to order' and destined for Genoa should be condemned as conditional contraband. The Council found that Genoa was customary port of transit for goods bound to Germany and, in view of the German Government's control of food, held that the conditional contraband should be treated as if it had been consigned to the German Government." (Comment in Hackworth, G. H., *Digest of International Law*, VII, 41.)

### (3) *Destination—Refinements.*

(a) *Intervening belligerent port.* In the case of *The Minna*, the Hamburg Prize Court found that the woodpulp cargo of this ship, although destined from Estonia to the United States, was absolute contraband and should be condemned since the ship had intended to stop at a British port for coal. The court declared:

"On account of the existing possibility of interference on the part of the enemy as well as the absence of any reliable control in cases of this nature, it has for long been an accepted principle of international legislation to presume enemy destination for absolute contraband, as contained in Article 23 (3) of the Prize Law. Neutral countries suffering under this necessary and justifiable assumption, therefore, are not confronted by any surprising and consequently unfair novelty but by an old, frequently practised custom of international law, which they must be supposed to know and take into account."

"A vessel carrying absolute contraband, the captain of which seriously contemplates a choice between two possibilities open to

him including touching an *enemy* port of call, must be treated under Prize Law as a vessel, the master of which has already decided to touch at an enemy port. It must, therefore, be sufficient under the law that calling at such a port was at the time of capture still *conditional* but could at any moment lose its alternative character and by the captain's final decision become direct steering for and touching at the enemy port. For obvious reasons it cannot possibly be expected of a belligerent country in such cases to submit to the risk of immediate enemy interference and to permit a vessel laden with absolute contraband to proceed unmolested on its way." (Hackworth, G. H., *Digest of International Law*, VII, 49.)

(4) *Navicerts and Malcerts.*

1. "In November of 1939 British representatives announced the inauguration of the navicert system for inter-neutral trade between the United States and specified European neutral countries. Under the system the neutral exporter filled out a form giving particulars as to the shipment and consignee, and the form was signed by British representatives. It was carried in the same vessel with the goods to enable favorable and speedy treatment by the British Contraband Control. In discussions with the British Embassy, the Department of State took the position that the system could only be regarded as a purely voluntary one for the benefit of exporters who might desire to take advantage of it. It reserved all rights of the United States and its nationals under international law and stated that it did not desire to take any position at the time with respect to the introduction of the proposed system. The Department made it clear that such comments were based upon the assumption of the correctness of the following assertions:

"1. The proposed Navicert System will in no sense be used to interfere in any way with the normal volume of exports of genuine neutral character from the United States to any neutral country.

"2. The proposed Navicert System will not be used in any way to discriminate against the United States and United States exporters.

"3. The granting or rejection of a Navicert shall be conditional upon circumstances related solely to the character of the goods and conditions in the country of importation and in no respect upon conditions related to American exporters or to the United States.

"4. Whenever applications for Navicerts are rejected a clear, concise statement of the reasons for such rejections shall be given

to the applicant for the Navicert.' ” (Memorandum, Nov. 9, 1939, Department of State. Comment in Hackworth, G. H., *Digest of International Law*, VII, 215-6.)

2. “... the ‘Navicert’ system operates by voluntary application on the part of American exporters. No obligation is imposed upon any American exporter to apply for or to refrain from applying for a ‘Navicert’. The United States Government is not responsible for nor connected with the operation of the system. It has announced publicly and has informed the British Government that it reserves the right of the United States and its nationals under International Law.” (The Legal Adviser of the Department of State, Hackworth, to Fred Christoph, January 31, 1940. Hackworth, G. H., *Digest of International Law*, VII, 216.)

3. “On Jan. 17, 1940 the Minister of Economic Warfare (Cross) explained in the House of Commons that ‘Over 11,000 applications for navicerts had been received since the system was introduced on November 1 [1939], and applications were coming forward at the rate of 500 a day.’ ” (*Times*, (London), Jan. 18, 1940, p. 3, col. 3. Comment in Hackworth, G. H., *Digest of International Law*, VII, 216.)

4. “On Feb. 29, 1940 the German Legation at The Hague warned neutrals against accepting British navicerts. Similar warnings were issued at Berlin and at The Hague on the following days.” (*Times* (London), Mar. 1, 1940, p. 8, col. 4. *New York Times*, Mar. 1, 1940, p. 8, col. 6; *Ibid.*, Mar. 2, 1940, p. 4, col. 8; *Ibid.*; Mar. 5, 1940, p. 5, col. 4. Comment in Hackworth, G. H., *Digest of International Law*, VII, 216).

5. A British Order in Council, July 31, 1940, effective August 1, 1940 stated that Germany had violated the laws of maritime warfare. After providing for the issuance of “ship navicerts” by British or allied authorities at British, allied, and neutral ports, this Order by way of reprisals declared:

“2. Any vessel on her way to or from a port through which goods might reach or come from enemy territory or the enemy armed forces, not being provided with a Ship Navicert valid for the voyage on which she is engaged, shall, until the contrary is established, be deemed to be carrying contraband or goods of enemy origin or ownership, and shall be liable to seizure as Prize; provided that a vessel, other than a vessel which sailed from or has called at an enemy port, shall not be liable to seizure under the provisions of this Article unless she sailed from or could have called at a



port at which she would, if duly qualified, have obtained a Ship Navicert."

"8. Nothing in this Order shall be deemed to confer any immunity from detention, seizure or condemnation on any vessel or goods by reason of being provided with or covered by any form of pass or permit." (*Statutory Rules and Orders*, 1940, no. 1436. Hackworth, G. H., *Digest of International Law*, VII, 217.)

6. Further articles from the Order in Council of July 31, 1940:

"3.—(1) Goods consigned to any port or place from which they might reach enemy territory or the enemy armed forces, and not covered by a valid Cargo Navicert or, in the case of goods shipped from a British or Allied port, by a valid Export or Transshipment License, where such License is required, shall, until the contrary is established, be deemed to have an enemy destination.

"(2) Goods shipped from any port from which goods of enemy origin or ownership might have been shipped, and not covered by a valid Certificate of Origin and Interest, shall, until the contrary is established, be deemed to be of enemy origin or ownership.

"4. Goods of enemy origin or ownership shall be liable to condemnation.

"5. Any vessel seized under Article 2 hereof and carrying contraband or goods of enemy origin or ownership shall be liable to condemnation in respect of such carriage." (*Statutory Rules and Orders*, 1940, no. 1436. Hackworth, G. H., *Digest of International Law*, VII, 141-2.)

7. "On July 1, 1941 the British Government instituted a system of 'mailcerts' for parcels mailed from the United States to various European and African countries. The British Ministry of Economic Warfare stated that the purpose was to enable the senders of such parcels 'to ascertain, in advance of posting whether facilities can be given for their passage through British examination stations.'" (Counselor of Embassy in London, Johnson, to Secretary of State Hull, enclosure, July 9, 1941. Comment in Hackworth, G. H., *Digest of International Law*, VII, 216.)

## 11. *Conclusions.*

Despite the relative scarcity of available documents for World War II in regard to contraband, we can state as a conclusion that contraband of war still remains a valid concept. As methods of warfare changed, the general classification of goods as contra-

band has been expanded and the means of determining such goods have been refined, but as long as there remains a neutral country in time of war, the question of contraband will arise.

As the concept stands today, the problem of contraband will be found whenever neutral goods are shipped aboard a neutral or an enemy ship or whenever enemy goods are found upon a neutral vessel. The essential criteria of contraband remain: 1) the belligerent character of the goods, and 2) hostile destination.

## II. THE CRIMEA CONFERENCE

(The Department of State Bulletin, Vol. XII, No. 295, Feb. 18, 1945)

For the past eight days, Winston S. Churchill, Prime Minister of Great Britain, Franklin D. Roosevelt, President of the United States of America, and Marshal J. V. Stalin, Chairman of the Council of People's Commissars of the Union of Soviet Socialist Republics, have met with the Foreign Secretaries, Chiefs of Staff, and other advisors in the Crimea.

In addition to the three heads of government, the following took part in the conference:

For the United States of America:

Edward R. Stettinius, Jr., Secretary of State

Fleet Admiral William D. Leahy, U.S.N., Chief of Staff to the President

Harry L. Hopkins, Special Assistant to the President

Justice James F. Byrnes, Director, Office of War Mobilization and Reconversion

General of the Army George C. Marshall, U.S.A., Chief of Staff, U. S. Army

Fleet Admiral Ernest J. King, U.S.N., Chief of Naval Operations and Commander in Chief, U.S. Fleet

Lieutenant General Brehon B. Somervell, Commanding General, Army Service Forces

Vice Admiral Emory S. Land, War Shipping Administrator

Major General L. S. Kuter, U.S.A., Staff of Commanding General, U. S. Army Air Forces

W. Averell Harriman, Ambassador to the U.S.S.R.

H. Freeman Matthews, Director, Office of European Affairs, State Department

Alger Hiss, Deputy Director, Office of Special Political Affairs, Department of State

Charles E. Bohlen, Assistant to the Secretary of State together with political, military, and technical advisors.

### For the United Kingdom:

Anthony Eden, Secretary of State for Foreign Affairs

Lord Leathers, Minister of War Transport

Sir A. Clark Kerr, H. M. Ambassador at Moscow.

Sir Alexander Cadogan, Permanent Under Secretary of State for Foreign Affairs

Sir Edward Bridges, Secretary of the War Cabinet

Field Marshal Sir Alan Brooke, Chief of the Imperial General Staff

Marshal of the Royal Air Force Sir Charles Portal, Chief of the Air Staff

Admiral of the Fleet Sir Andrew Cunningham, First Sea Lord

General Sir Hastings Ismay, Chief of Staff to the Minister of Defense

together with

Field Marshal Alexander, Supreme Allied Commander, Mediterranean Theatre

Field Marshal Wilson, Head of the British Joint Staff Mission at Washington

Admiral Somerville, Joint Staff Mission at Washington together with military and diplomatic advisors.

### For the Soviet Union:

V. M. Molotov, People's Commissar for Foreign Affairs of the U.S.S.R.

Admiral Kuznetsov, People's Commissar for the Navy

Army General Antonov, Deputy Chief of the General Staff of the Red Army

A. Y. Vyshinski, Deputy People's Commissar for Foreign Affairs of the U.S.S.R.



I. M. Maiski, Deputy People's Commissar of Foreign Affairs  
of the U.S.S.R.

Marshal of Aviation Khudyakov

F. T. Gusev, Ambassador in Great Britain

A. A. Gromyko, Ambassador in U.S.A.

The following statement is made by the Prime Minister of Great Britain, the President of the United States of America, and the Chairman of the Council of People's Commissars of the Union of Soviet Socialist Republics on the results of the Crimean Conference:

### THE DEFEAT OF GERMANY

We have considered and determined the military plans of the three allied powers for the final defeat of the common enemy. The military staffs of the three allied nations have met in daily meetings throughout the Conference. These meetings have been most satisfactory from every point of view and have resulted in closer coordination of the military effort of the three allies than ever before. The fullest information has been interchanged. The timing, scope and co-ordination of new and even more powerful blows to be launched by our armies and air forces into the heart of Germany from the east, west, north and south have been fully agreed and planned in detail.

Our combined military plans will be made known only as we execute them, but we believe that the very close-working partnership among the three staffs attained at the conference will result in shortening the war. Meetings of the three staffs will be continued in the future whenever the need arises.

Nazi Germany is doomed. The German people will only make the cost of their defeat heavier to themselves by attempting to continue a hopeless resistance.

## THE OCCUPATION AND CONTROL OF GERMANY

We have agreed on common policies and plans for enforcing the unconditional surrender terms which we shall impose together on Nazi Germany after German armed resistance has been finally crushed. These terms will not be made known until the final defeat of Germany has been accomplished. Under the agreed plan, the forces of the three powers will each occupy a separate zone of Germany. Coordinated administration and control have been provided for under the plan through a central control commission consisting of the Supreme Commanders of the three powers with headquarters in Berlin. It has been agreed that France should be invited by the three powers, if she should so desire, to take over a zone of occupation and to participate as a fourth member of the control commission. The limits of the French zone will be agreed by the four Governments concerned through their representatives on the European Advisory Commission.

It is our inflexible purpose to destroy German militarism and nazism and to insure that Germany will never again be able to disturb the peace of the world. We are determined to disarm and disband all German armed forces; break up for all time the German General Staff that has repeatedly contrived the resurgence of German militarism; remove or destroy all German military equipment; eliminate or control all German industry that could be used for military production; bring all war criminals to just and swift punishment and exact reparation in kind for the destruction wrought by the Germans; wipe out the Nazi party, Nazi laws, organizations and institutions, remove all Nazi and militarist influences from public office and from the cultural and economic life of the German people; and take in harmony such other

measures in Germany as may be necessary to the future peace and safety of the world. It is not our purpose to destroy the people of Germany, but only when nazism and militarism have been extirpated will there be hope for a decent life for Germans, and a place for them in the comity of nations.

#### REPARATIONS BY GERMANY

We have considered the question of the damage caused by Germany to the Allied Nations in this war and recognized it as just that Germany be obliged to make compensation for this damage in kind to the greatest extent possible. A commission for the compensation of damage will be established. The commission will be instructed to consider the question of the extent and methods for compensating damage caused by Germany to the Allied countries. The commission will work in Moscow.

#### UNITED NATIONS CONFERENCE

We are resolved upon the earliest possible establishment with our allies of a general international organization to maintain peace and security. We believe that this is essential, both to prevent aggression and to remove the political, economic and social causes of war through the close and continuing collaboration of all peace-loving peoples.

The foundations were laid at Dumbarton Oaks. On the important question of voting procedure, however, agreement was not there reached. The present conference has been able to resolve this difficulty.

We have agreed that a conference of the United Nations should be called to meet at San Francisco, in the United States, on April 25, 1945, to prepare the charter of such an organization, along the lines proposed in the informal conversations at Dumbarton Oaks.



The Government of China and the Provisional Government of France will be immediately consulted and invited to sponsor invitations to the conference jointly with the Governments of the United States, Great Britain and the Union of Soviet Socialist Republics. As soon as the consultation with China and France has been completed, the text of the proposals on voting procedure will be made public.

#### DECLARATION ON LIBERATED EUROPE

The Premier of the Union of Soviet Socialist Republics, the Prime Minister of the United Kingdom and the President of the United States of America have consulted with each other in the common interests of the peoples of their countries and those of liberated Europe. They jointly declare their mutual agreement to concert during the temporary period of instability in liberated Europe the policies of their three Governments in assisting the peoples liberated from the domination of Nazi Germany and the peoples of the former Axis satellite states of Europe to solve by democratic means their pressing political and economic problems.

The establishment of order in Europe and the rebuilding of national economic life must be achieved by process which will enable the liberated peoples to destroy the last vestiges of nazism and fascism and to create democratic institutions of their own choice. This is a principle of the Atlantic Charter—the right of all peoples to choose the form of government under which they will live—the restoration of sovereign rights and self-government to those peoples who have been forcibly deprived of them by the aggressor nations.

To foster the conditions in which the liberated peoples may exercise these rights, the three Govern-

ments will jointly assist the people in any European liberated state or former Axis satellite state in Europe, where in their judgment conditions require (A) to establishment conditions of internal peace; (B) to carry out emergency measures for the relief of distressed peoples; (C) to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishments through free elections of governments responsive to the will of the people; and (D) to facilitate where necessary to holding of such elections.

The three Governments will consult the other United Nations and provisional authorities or other governments in Europe when matters of direct interest to them are under consideration.

When, in the opinion of the three Governments, conditions in any European liberated state or any former Axis satellite state in Europe make such action necessary, they will immediately consult together on the measures necessary to discharge the joint responsibilities set forth in this declaration.

By this declaration we reaffirm our faith in the principles of the Atlantic Charter, our pledge in the Declaration by the United Nations and our determination to build, in cooperation with other peace-loving nations, world order under law, dedicated to peace, security, freedom and the general well-being of all mankind.

In issuing this declaration, the three powers express the hope that the Provisional Government of the French Republic may be associated with them in the procedure suggested.

#### POLAND

A new situation has been created in Poland as a result of her complete liberation by the Red Army.

This calls for the establishment of a Polish Provisional Government which can be more broadly based than was possible before the recent liberation of western Poland. The Provisional Government which is now functioning in Poland should therefore be reorganized on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad. This new government should then be called the Polish Provisional Government of National Unity.

M. Molotoff, Mr. Harriman and Sir A. Clark Kerr are authorized as a commission to consult in the first instance in Moscow with members of the present Provisional Government and with other Polish democratic leaders from within Poland and from abroad, with a view to the reorganization of the present Government along the above lines. This Polish Provisional Government of National Unity shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot. In these elections all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

When a Polish Provisional Government of National Unity has been properly formed in conformity with the above the Government of the U.S.S.R., which now maintains diplomatic relations with the present Provisional Government of Poland, and the Government of the United Kingdom and the Government of the United States of America will establish diplomatic relations with the new Polish Provisional Government of National Unity and will exchange Ambassadors, by whose reports the respective Governments will be kept informed about the situation in Poland.

The three heads of Government consider that the



eastern frontier of Poland should follow the Curzon Line, with digressions from it in some regions of five to eight kilometers in favor of Poland. They recognize that Poland must receive substantial accessions of territory in the north and west. They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due course on the extent of these accessions and that the final delimitation of the western frontier of Poland should thereafter await the peace conference.

We have agreed to recommend to Marshal Tito and Dr. Subasitch that the agreement between them should be put into effect immediately and that a new Government should be formed on the basis of that agreement. We also recommend that as soon as the new Government has been formed it should declare that:

(1) The anti-Fascist Assembly of National Liberation [AVNOJ] should be extended to include members of the last Yugoslav Parliament [Skupschina] who have not compromised themselves by collaboration with the enemy, thus forming a body to be known as a temporary Parliament; and,

(2) Legislative acts passed by the anti-Fascist Assembly of National Liberation will be subject to subsequent ratification by a Constituent Assembly.

There was also a general review of other Balkan questions.

#### MEETINGS OF FOREIGN SECRETARIES

Throughout the conference, besides the daily meetings of the heads of Governments and the Foreign Secretaries, separate meetings of the three Foreign Secretaries and their advisers have also been held daily.

These meetings have proved of the utmost value

and the conference agreed that permanent machinery should be set up for regular consultation between the three Foreign Secretaries. They will, therefore, meet as often as may be necessary, probably about every three or four months. These meetings will be held in rotation in the three capitals, the first meeting being held in London, after the United Nations' conference on world organization.

#### UNITY FOR PEACE AS FOR WAR

Our meeting here in the Crimea has reaffirmed our common determination to maintain and strengthen in the peace to come that unity of purpose and of action which has made victory possible and certain for the United Nations in this war. We believe that this is a sacred obligation which our Governments owe to our peoples and to all the peoples of the world.

Only with the continuing and growing cooperation and understanding among our three countries and among all the peace-loving nations can the highest aspiration of humanity be realized—a secure and lasting peace which will, in the words of the Atlantic Charter, “afford assurance that all the men in all the lands may live out their lives in freedom from fear and want.”

Victory in this war and the establishment of the proposed international organization will provide the greatest opportunity in all history to create in the years to come the essential conditions of such a peace.

WINSTON S. CHURCHILL  
FRANKLIN D. ROOSEVELT  
J. STALIN

February 11, 1945.

## SUPPLEMENTAL REPORT ON FREED PRISONERS

*The text of an agreement reached at the Big Three conference concerning prisoners liberated by the Allies' forces invading Germany follows:*

A comprehensive agreement was reached at the Crimea conference providing detailed arrangements for the protection, maintenance and repatriation of prisoners of war and civilians of the British Commonwealth, Soviet Union and United States liberated by the Allied forces now invading Germany.

Under these arrangements each Ally will provide food, clothing, medical attention and other needs for the nationals of the others until transport is available for their repatriation. In caring for British subjects and American citizens, the Soviet Government will be assisted by British and American officers. Soviet officers will assist British and American authorities in their task of caring for Soviet citizens liberated by the British and American forces during such time as they are on the Continent of Europe or in the United Kingdom, awaiting transport to take them home.

We are pledged to give every assistance consistent with operational requirements to help to insure that all these prisoners of war and civilians are speedily repatriated.

(The Department of State Bulletin, Vol. XII, No. 297, March 4, 1945)

**III. ACT OF CHAPULTEPEC****DECLARATION ON RECIPROCAL ASSISTANCE AND  
AMERICAN SOLIDARITY**

**WHEREAS:**

1. The peoples of the Americas, animated by a profound love of justice, remain sincerely devoted to the principles of international law:



2. It is their desire that such principles, notwithstanding the present difficult circumstances, may prevail with greater force in future international relations:

3. The Inter-American Conferences have repeatedly proclaimed certain fundamental principles, but these must be reaffirmed and proclaimed at a time when the juridical bases of the community of nations are being established.

4. The new situation in the world makes more imperative than ever the union and solidarity of the American peoples, for the defense of their rights and the maintenance of international peace:

5. The American states have been incorporating in their international law, since 1890, by means of conventions, resolutions and declarations, the following principles:

(a) The proscription of territorial conquest and the non-recognition of all acquisitions made by force (First International Conference of American States, 1890).

(b) The condemnation of intervention by a State in the internal or external affairs of another (Seventh International Conference of American States, 1933, and Inter-American Conference for the Maintenance of Peace, 1936).

(c) The recognition that every war or threat of war affects directly or indirectly all civilized peoples, and endangers the great principles of liberty and justice which constitute the American ideal and the standard of its international policy (Inter-American Conference for the Maintenance of Peace, 1936).

(d) The procedure of mutual consultation in order to find means of peaceful cooperation in the event of war or threat of war between American countries

(Inter-American Conference for the Maintenance of Peace, 1936).

(e) The recognition that every act susceptible of disturbing the peace of America affects each and every one of them and justifies the initiation of the procedure of consultation (Inter-American Conference for the Maintenance of Peace, 1936).

(f) That any difference or dispute between the American nations, whatever its nature or origin, shall be settled by the methods of conciliation, or unrestricted arbitration, or through the operation of international justice (Inter-American Conference for the Maintenance of Peace, 1936).

(g) The recognition that respect for the personality, sovereignty and independence of each American State constitutes the essence of international order sustained by continental solidarity, which historically has been expressed and sustained by declarations and treaties in force (Eighth International Conference of American States, 1938).

(h) The affirmation that respect for and the faithful observance of treaties constitutes the indispensable rule for the development of peaceful relations between States, and treaties can only be revised by agreement of the contracting parties (Declaration of American Principles, Eighth International Conference of American States, 1938).

(i) That in case the peace, security or territorial integrity of any American republic is threatened by acts of any nature that may impair them, they proclaim their common concern and their determination to make effective their solidarity, coordinating their respective sovereign wills by means of the procedure of consultation, using the measures which in each case the circumstances may make advisable (Declaration

of Lima, Eighth International Conference of American States, 1938).

(j) That any attempt on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty or the political independence of an American State shall be considered as an act of aggression against all the American States. (Declaration XV of the Second Meeting of the Ministers of Foreign Affairs, Habana, 1940).

6. The furtherance of these principles, which the American States have practiced in order to secure peace and solidarity between the nations of the Continent constitutes an effective means of contributing to the general system of world security and of facilitating its establishment: and

7. The security and solidarity of the Continent are affected to the same extent by an act of aggression against any of the American States by a non-American State, as by an American State against one or more American states.

## PART I

### *Declaration*

THE GOVERNMENTS REPRESENTED AT THE INTER-AMERICAN CONFERENCE ON WAR AND PEACE

DECLARE:

First. That all sovereign States are juridically equal amongst themselves.

Second. That every state has the right to the respect of its individuality and independence, on the part of the other members of the international community.

Third. That every attack of a State against the integrity or the inviolability of territory, or against the sovereignty or political independence of an American State, shall, conformably to Part III hereof, be con-



sidered as an act of aggression against the other States which sign this declaration. In any case invasion by armed forces of one State into the territory of another trespassing boundaries established by treaty and demarcated in accordance therewith shall constitute an act of aggression.

Fourth. That in case acts of aggression occur or there may be reasons to believe that an aggression is being prepared by any other State against the integrity and inviolability of territory, or against the sovereignty or political independence of an American State, the States signatory to this declaration will consult amongst themselves in order to agree upon measures it may be advisable to take.

Fifth. That during the war, and until the treaty recommended in Part II hereof is concluded, the signatories of this declaration recognize that such threats and acts of aggression as indicated in paragraphs Third and Fourth above constitute an interference with the war effort of the United Nations, calling for such procedures, within the scope of their constitutional powers of a general nature and for war, as may be found necessary, including:

- recall of chiefs of diplomatic missions;
- breaking of diplomatic relations;
- breaking of consular relations;
- breaking of postal, telegraphic, telephonic, radio-telephonic relations;
- interruptions of economic, commercial and financial relations;
- use of armed force to prevent or repel aggression.

Sixth. That the principles and procedure contained in this declaration shall become effective immediately, inasmuch as any act of aggression or threat of aggression during the present state of war interferes with the war effort of the United Nations to obtain

victory. Henceforth, and with the view that the principles and procedure herein stipulated shall conform with the constitutional principles of each republic, the respective Governments shall take the necessary steps to perfect this instrument in order that it shall be in force at all times.

## PART II

### *Recommendation*

#### THE INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE

##### RECOMMENDS:

That for the purpose of meeting threats or acts of aggression against any American Republic following the establishment of peace, the Governments of the American Republics should consider the conclusion, in accordance with their constitutional processes, of a treaty establishing procedures whereby such threats or acts may be met by:

The use, by all or some of the signatories of said treaty of any one or more of the following measures:

recall of chiefs of diplomatic missions;

breaking of diplomatic relations;

breaking of consular relations;

breaking of postal, telegraphic, telephonic, radio-telephonic relations;

interruption of economic, commercial and financial relations;

use of armed force to prevent or repel aggression.

## PART III

This declaration and recommendation provide for a regional arrangement for dealing with matters relating to the maintenance of international peace and security as are appropriate for regional action in this Hemisphere and said arrangements and the activities and procedures referred to therein shall be consistent

with the purposes and principles of the general international organization, when established.

This declaration and recommendation shall be known as the ACT OF CHAPULTEPEC.

#### **IV. FURTHER RESOLUTIONS OF INTER-AMERICAN CONFERENCE**

##### **RESOLUTION ON ESTABLISHMENT OF A GENERAL INTERNATIONAL ORGANIZATION**

(The Department of State Bulletin, Vol. XII, No. 299, March 18, 1945)

WHEREAS:

The American Republics have at all times demonstrated their attachment to the principles of peaceful international relationships based on justice and law;

The tradition of universal cooperation, that has consistently inspired the inter-American system into which such principles have by now been definitely incorporated, has struck deeper roots and gained in strength due to the interdependence of the nations of the modern world which makes peace indivisible and the welfare of one country conditional upon that of all the others;

The Proposals for the Establishment of a General International Organization formulated at Dumbarton Oaks by the representatives of the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the Republic of China were made available on October 9, 1944, to all countries for their full study and discussion;

These Proposals are capable of certain improvements with a view to perfecting them and to realizing with greater assurance the objectives which they enunciate;

The Organization to be created must reflect the ideas and hopes of all peace-loving nations participating in its creation;



In the present inter-American Conference, the Republics here represented which did not take part in the Dumbarton Oaks Conversations have formulated a certain number of suggestions which in their opinion would contribute to the perfecting of the above-mentioned Proposals;

It would undoubtedly be useful for the United Nations not represented in this Conference to have a synthesis of the views expressed in it, and it would also be very valuable if those nations were to communicate to the Governments of the American Republics here present, prior to the Conference at San Francisco, their views regarding the Dumbarton Oaks Proposals,

THE INTER-AMERICAN CONFERENCE ON PROBLEMS  
OF WAR AND PEACE, DECLARES:

1. That the American Republics represented in this Conference are determined to cooperate with each other and with other peace-loving nations in the establishment of a General International Organization based upon law, justice, and equity.

2. That those Republics desire to make their full contribution, individually and by common action in and through the Inter-American System, effectively coordinating and harmonizing that system with the General International Organization for the realization of the latter's objectives;

3. That the Dumbarton Oaks Proposals constitute a basis for, and a valuable contribution to the setting up of, a General Organization which may permit the achievement of a just peaceful order and the welfare of all nations, which the American Republics are striving to attain; and

RESOLVES:

1. That the Secretary General of the Conference

transmit to the states which formulated the Dumbarton Oaks Proposals, to the other nations invited to the forthcoming Conference at San Francisco, and to that Conference itself, this resolution, and the report with the documents hereto attached containing the views, comments, and suggestions which, in the judgment of the American Republics presenting them, should be taken into consideration in the formulation of the definitive Charter of the projected Organization, especially the following points regarding which a consensus exists among the American Republics represented in this Conference that did not participate in the Dumbarton Oaks Conversations:

a) The aspiration of universality as an ideal toward which the Organization should tend in the future;

b) The desirability of amplifying and making more specific the enumeration of the principles and purposes of the Organization;

c) The desirability of amplifying and making more specific the powers of the General Assembly in order that its action, as the fully representative organ of the international community may be rendered effective, harmonizing the powers of the Security Council with such amplification;

d) The desirability of extending the jurisdiction and competence of the international tribunal or court of justice;

e) The desirability of creating an international agency specially charged with promoting intellectual and moral cooperation between nations;

f) The desirability of preferably solving controversies and questions of an inter-American character in accordance with inter-American methods and procedures, in harmony with those of the General International Organization; and

g) The desirability of giving an adequate repre-

sentation to Latin America in the Security Council.

2. To express to the other United Nations invited to participate in the San Francisco Conference the common desire of the American Republics to receive from them before that Conference the views, comments, and suggestions which they on their part may deem it convenient to transmit.

The Governments signatory to the present resolution retain full liberty to present and support in the San Francisco Conference, as representatives respectively of sovereign states, all the view-points which they may consider pertinent, many of which may be found in the annexed documents.

#### RESOLUTION CONCERNING ARGENTINA

#### THE INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE

Having considered the text of the communication directed by the Argentine Government to the Pan American Union,

#### CONSIDERING:

1. That the Conference was called for the purpose of taking measures to intensify the war effort of the United American Nations against Germany and Japan and to seek the strengthening of their political and economic sovereignty and their cooperation and security;

2. That the circumstances existing before the meeting have undergone no change that would have justified the Conference in taking steps to re-establish, as it earnestly desires to do, the unity of the 21 states in the policy of solidarity that has been strengthened during the deliberations of the Conference,

#### RESOLVES:

1. To deplore that the Argentine Nation has up to the present time not found it possible to take the steps



which would permit her participation in the Inter-American Conference on Problems of War and Peace, with the conclusions of which the principle of solidarity of the hemisphere against all types of aggression is consolidated and extended.

2. To recognize that the unity of the peoples of America is indivisible and that the Argentine Nation is and always has been an integral part of the union of the American Republics.

3. To express its desire that the Argentine Nation may put herself in a position to express her conformity with and adherence to the principles and declarations which are the results of the Conference of Mexico, and which enrich the juridical and political heritage of the continent and enlarge the scope of American public law, to which on so many occasions Argentina herself has made notable contributions.

4. To reiterate the declaration, established at Habana, amplified and invigorated by the Act of Chapultepec, and demonstrated by the association of the American Republics as members of the United Nations, and this Conference holds, that complete solidarity and a common policy among the American States when faced with threats or acts of aggression by any State against an American State are essential for the security and peace of the continent.

5. To declare that the Conference hopes that the Argentine Nation will implement a policy of co-operative action with the other American Nations, so as to identify herself with the common policy which these nations are following, and so as to orient her own policy so that she may achieve her incorporation into the United Nations as a signatory to the joint declaration entered into by them.

6. To declare that the final act of this Conference shall be open to adherence by the Argentine Nation,

always in accordance with the criteria of this resolution, and to authorize His Excellency Dr. Ezequiel Padilla, President of the Conference, to communicate the resolutions of this assembly to the Argentine Government through the channel of the Pan American Union.

## **V. SOVIET DENUNCIATION OF PACT WITH JAPAN**

(The Department of State Bulletin, Vol. XII, No. 305, April 29, 1945)

The American Ambassador at Moscow transmitted to the Secretary of State, by a telegram dated April 5, 1945, the following statement, as received from the press section of the Foreign Office, regarding Soviet denunciation of the U.S.S.R.-Japanese neutrality pact:

"Today at 3 p.m. People's Commissar for Foreign Affairs of the USSR Mr. V. M. Molotov, received the Japanese Ambassador, Mr. N. Sato, and made the following statement to him in the name of the Soviet Government:

" 'The neutrality pact between the Soviet Union and Japan was concluded on April 13, 1941, that is, before the attack of Germany on the USSR and before the outbreak of war between Japan on the one hand and England and the United States on the other. Since that time the situation has been basically altered. Germany has attacked the USSR, and Japan, the ally of Germany, is aiding the latter in its war against the USSR. Furthermore Japan is waging war with the USA and England, which are the allies of the Soviet Union.

" 'In these circumstances the neutrality pact between Japan and the USSR has lost its sense, and the prolongation of that pact has become impossible.

" 'On the strength of the above and in accordance with Article Three of the above mentioned pact, which envisaged the right of denunciation one year before the lapse of the five year period of operation of the pact, the Soviet Government hereby makes known to the Government of Japan its wish to denounce the pact of April 13, 1941.'

" 'The Japanese Ambassador Mr. N. Sato, promised to inform the Japanese Government of the statement of the Soviet Government.'

The pact and an accompanying declaration, as printed in the *Moscow News* of April 17, 1941 and transmitted to the Department by the American Embassy, follow:

# PACT ON NEUTRALITY BETWEEN UNION OF SOVIET SOCIALIST REPUBLICS AND JAPAN

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics and His Majesty the Emperor of Japan, guided by a desire to strengthen peaceful and friendly relations between the two countries, have decided to conclude a pact on neutrality, for which purpose they have appointed as their Representatives:

the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics—

Vyacheslav Mikhailovich Molotov, Chairman of the Council of People's Commissars and People's Commissar of Foreign Affairs of the Union of Soviet Socialist Republics;

His Majesty the Emperor of Japan—

Yosuke Matsuoka, Minister of Foreign Affairs, Jusanmin, Cavalier of the Order of the Sacred Treasure of the First Class, and

Yoshitsugu Tatekawa, Ambassador Extraordinary and Plenipotentiary to the Union of Soviet Socialist Republics, Lieutenant General, Jusanmin, Cavalier of the Order of the Rising Sun of the First Class and the Order of the Golden Kite of the Fourth Class, who, after an exchange of their credentials, which were found in due and proper form, have agreed on the following:

## ARTICLE ONE

Both Contracting Parties undertake to maintain peaceful and friendly relations between them and



mutually respect the territorial integrity and inviolability of the other Contracting Party.

#### ARTICLE TWO

Should one of the Contracting Parties become the object of hostilities on the part of one or several third powers, the other Contracting Party will observe neutrality throughout the duration of the conflict.

#### ARTICLE THREE

The present Pact comes into force from the day of its ratification by both Contracting Parties and remains valid for five years. In case neither of the Contracting Parties denounces the Pact one year before the expiration of the term, it will be considered automatically prolonged for the next five years.

#### ARTICLE FOUR

The present Pact is subject to ratification as soon as possible. The instruments of ratification shall be exchanged in Tokyo, also as soon as possible.

In confirmation whereof the above-named Representatives have signed the present Pact in two copies, drawn up in the Russian and Japanese languages, and affixed thereto their seals.

Done in Moscow on April 13, 1941, which corresponds to the 13th day of the fourth month of the 16th year of Showa.

V. MOLOTOV.

YOSUKE MATSUOKA.

YOSHITSUGU TATEKAWA.

#### DECLARATION

In conformity with the spirit of the Pact on neutrality concluded on April 13, 1941, between the U.S.S.R. and Japan, the Government of the U.S.S.R. and the Government of Japan, in the inter-

est of insuring peaceful and friendly relations between the two countries, solemnly declare that the U.S.S.R. pledges to respect the territorial integrity and inviolability of Manchoukuo, and Japan pledges to respect the territorial integrity and inviolability of the Mongolian People's Republic.

MOSCOW, *April 13, 1941.*

On behalf of the Government of the U.S.S.R.

V. MOLOTOV.

On behalf of the Government of Japan

YOSUKE MATSUOKA.

YOSHITSUGU TATEKAWA.

## **VI. PROCLAMATION OF GERMAN SURRENDER**

(The Department of State Bulletin, Vol. XII, No. 307, May 13, 1945)

The Allied armies, through sacrifice and devotion and with God's help, have wrung from Germany a final and unconditional surrender. The western world has been freed of the evil forces which for five years and longer have imprisoned the bodies and broken the lives of millions upon millions of free-born men. They have violated their churches, destroyed their homes, corrupted their children, and murdered their loved ones. Our Armies of Liberation have restored freedom to these suffering peoples, whose spirit and will the oppressors could never enslave.

Much remains to be done. The victory won in the West must now be won in the East. The whole world must be cleansed of the evil from which half the world has been freed. United, the peace-loving nations have demonstrated in the West that their arms are stronger by far than the might of dictators or the tyranny of military cliques that once called us soft and weak. The power of our peoples to defend themselves against all enemies will be proved in the Pacific war as it has been proved in Europe.

For the triumph of spirit and of arms which we

have won, and for its promise to peoples everywhere who join us in the love of freedom, it is fitting that we, as a nation, give thanks to Almighty God, who has strengthened us and given us the victory.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby appoint Sunday, May 13, 1945, to be a day of prayer.

I call upon the people of the United States, whatever their faith, to unite in offering joyful thanks to God for the victory we have won and to pray that He will support us to the end of our present struggle and guide us into the way of peace.

I also call upon my countrymen to dedicate this day of prayer to the memory of those who have given their lives to make possible our victory.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this eighth day  
of May, in the year of our Lord  
nineteen hundred and forty-five,  
[SEAL] and of the Independence of the  
United States of America the one  
hundred and sixty-ninth.

By the President:

HARRY S. TRUMAN

JOSEPH C. GREW

*Acting Secretary of State*

## VII. SINKING OF THE "AWA MARU"

### A. EXCHANGE OF COMMUNICATIONS BETWEEN THE GOVERNMENTS OF JAPAN AND THE UNITED STATES

(The Department of State Bulletin, Vol. XII, No. 310, June 3, 1945)

Reference is made to the Department's press release in regard to the sinking by submarine action of the Japanese vessel *Awa Maru*. The *Awa Maru* had



been granted Allied safe-conduct by reason of the fact that it had carried as part of its cargo relief supplies intended for Allied nationals in Japanese custody.

The following communication dated April 26 at Tokyo, protesting the sinking of this ship, has been received by the Department of State through the Swiss Government:

"One. Japanese Government have received communication of United States Government concerning sinking of *Awa Maru* transmitted by note verbale of Swiss Legation Tokyo 17th April, stating information has been that about midnight, April first east longitude date a ship was sunk by submarine action at a position approximately forty miles from the estimated scheduled position of *Awa Maru*. No lights or special illumination were visible at any time. The ship sunk almost immediately. One survivor stated that the ship was the *Awa Maru*

"Two. Prompted by traditional humanitarian principles Japanese Government complied with repeated earnest requests of United States Government for assistance in transporting relief supplies to United States and Allied prisoners of war and internees in Japanese hands. During November 1944 Japanese Government took delivery of 2,000 odd tons of relief supplies which had been sent from United States to Soviet territory in East Asia to forward same to Japan proper, Manchukuo, China, and southern areas. United States Government guaranteed to Japanese Government by the communication transmitted by note verbale of Swiss Legation in Toyko on 12th September, 1944 that Allied governments were prepared to accord safe conduct to Japanese ships to be employed in transport of goods between ports under Japanese administration and Soviet port of transshipment, Nakhodka. As notified by note verbale addressed to Swiss Legation, Toyko on 21st November, 1944 Japanese Government, finding it impossible to dispatch ships for the particular purpose of transporting the relief supplies to China and southern areas, decided to make use of the spaces of ships actually plying in these areas employing one ship for carrying them to Shanghai and Tsingtao and another to southern areas. The Japanese Government understood from above-mentioned communication from United States Government that these ships would equally, with the ship to be engaged in the transport

between Nakhodka and Japan, be guaranteed not to be subjected to attack, visit or any interference whatever by United States and Allied forces either on their outward or homeward voyages and in reply to Japanese Government's request for confirmation of this understanding, United States Government through note verbale of Swiss Legation, Tokyo 13th December, 1944, solemnly promised that the two ships selected to transport relief supplies will not be subjected to attack, visit or any interference by United States and Allied forces either on outward or homeward voyages connected with transportation these supplies. Again by their note verbale 30th January last, addressed to Swiss Legation, Tokyo, Japanese Government notified United States Government that in accordance with understanding reached between Japanese and United States Government to utilize for transport or relief supplies a ship plying between Japan and southern areas, Japanese Government had decided to utilize *Awa Maru* for same purpose and requested United States Government to reconfirm that same ship would not be subjected to attack, visit or any interference whatever by United States and Allied forces either on outward or homeward voyage. United States Government through note verbale of Swiss Legation, Tokyo 13th February, fully confirmed above-mentioned guarantee. *Awa Maru* sailed from Mozi 17th February and after carrying relief supplies to southern areas started on homeward voyage. Since the night of first April, however, she was not heard of and all efforts for her search proved futile. Japanese Government inquired of United States Government 10th April. Japanese Government received United States Government's communication referred to in paragraph one above. It has now become evident that *Awa Maru* sunk by a United States submarine in straits of Taiwan at midnight on 1st April and that 1,000 and several hundreds of her passengers and the cargo shared her fate.

"Three. As stated above United States Government have thrice guaranteed absolute safety of voyage of *Awa Maru*. Japanese Government notified United States Government of her routes and schedule and these were duly noted by United States Government. She following same routes according to same schedule, wore the marks which had been notified to and duly noted by United States Government and the marks were illuminated and navigation lights were lighted at night. That ship was at scheduled position at time of sinking is clear also from a communication received from her on 1st April immediately before she was sunk.

Therefore, it cannot but be concluded that she was deliberately and wilfully attacked and sunk by United States submarine, responsibility for disaster, therefore, unmistakably lies with United States Government.

"Four. In spite of United States Government's malicious propaganda distorting fact of the fair treatment accorded by Japanese Government to prisoners of war and civilian internees, the Japanese Government have unflinchingly continued their efforts for humanitarian treatment of prisoners of war and internees in their hands. The *Awa Maru* was selected to be employed in such humanitarian service in order to cope with United States Government's ardent desire and in the face of considerable difficulties. The United States force in violation of United States Government's solemn promise to give her safe conduct, intercepted her on her return voyage and deliberately attacked and sunk her. This is the most outrageous act of treachery unparalleled in the world history of war. United States Government are to be deemed to have abandoned their former desire relating to the treatment of United States prisoners of war and civilian internees in Japanese hands. Japanese Government most emphatically demand that United States Government bear the whole responsibility for this disgraceful act committed in violation of the fundamental principles of humanity and international law. Japanese Government as well as Japanese people, are most profoundly indignant at occurrence of this extremely outrageous incident. They will watch United States Government's attitude concerning this matter with most serious concern. They do hereby file the strongest protest with United States Government and declare that they reserve all rights for taking any such measures as may be proved necessary to cope with such perfidious act on the part of United States Government."

The United States Government sent the following reply, dated May 18, to the Swiss Government for transmission to Tokyo, and it is presumed that the Japanese Government has now received this reply:

"The Japanese Government's protest concerning the *Awa Maru* incident has been received by the Government of the United States.

"As noted in previous communications concerning this incident, all the facts and circumstances have not as yet been determined. An investigation is now in progress to assemble all relevant information and the commander of the American submarine has



been ordered tried by a general court martial to determine the question of primary responsibility for the disaster. In these circumstances, therefore, the Government of the United States cannot accept, prior to a judicial determination of the question of responsibility, the charge of the Japanese Government that responsibility for the disaster unmistakably lies with the Government of the United States.

"The Government of the United States categorically denies the Japanese Government's charge that the ship was deliberately and willfully attacked and sunk. It is not the practice of the Government of the United States willfully and deliberately to violate arrangements entered into with a foreign state. The Japanese Government may be assured that the Government of the United States likewise views this incident with the most serious concern and is proceeding expeditiously and objectively to ascertain the facts and to determine the question of responsibility. The Government of the United States will take such equitable measures either immediately or in the future as the dictates of justice may indicate as the result of the investigation and court martial.

"While some question may exist as to the propriety of the utilization of this ship as a means of evacuating from zones of danger large numbers of Japanese nationals, including Government officials, the Government of the United States sincerely regrets that in these circumstances there was such a heavy loss of life, and sympathizes with the families of those who perished in this disaster. The heavy death toll resulted in part from the refusal of survivors to accept life lines thrown to them from the submarine, which remained on the scene making every effort to rescue survivors.

"There is no valid connection between this disaster and the matter of treatment to be accorded prisoners of war and civilian internees in Japanese custody. The Government of the United States intends to continue to accord to Japanese nationals in its custody the same high standard of care and treatment as heretofore and expects that there will be no intentional deterioration in the treatment of Allied nationals in Japanese custody. The Japanese Government is hereby put on notice that any retaliatory acts against Allied nationals in Japanese custody will be a matter of the gravest concern to this Government and any persons issuing or executing orders in this connection will be severely dealt with at the appropriate time.

"All the information concerning this disaster which is presently

available to the American authorities at Washington has already been forwarded to the Government of Switzerland for transmittal to the Japanese Government. Additional information will be forwarded as it becomes available."

### B. REPORT OF INVESTIGATION

(The Department of State Bulletin, Vol. XIII, No. 316, July 15, 1945)

The Government of the United States has now completed its investigation of the circumstances surrounding the sinking by an American submarine of the Japanese vessel, *Awa Maru*, while returning, under safe-conduct, from a voyage to Hong Kong, Singapore, and other ports to carry supplies for Allied prisoners of war and civilian internees in Japanese custody.

The investigation discloses that the *Awa Maru* was substantially complying with all conditions of the safe-conduct agreement. In the circumstances the burden of making positive identification was placed upon the United States submarine. The investigation reveals that the United States was responsible for the sinking of the *Awa Maru*. The Government of the United States has acknowledged responsibility to the Japanese Government through the Swiss Government in a telegram dated June 29, 1945, and suggested that, in view of the complex nature of the question of indemnity demanded by the Japanese, this matter be deferred until the end of the war.

On April 11, 1945, the Department of State announced that it had been informed by the Navy Department that the Japanese vessel, *Awa Maru*, traveling under Allied safe-conduct had been sunk by submarine action.

On May 29, 1945, the Department released the text of a Japanese protest dated April 26 as well as the text of this Government's reply dated May 18. In this reply, this Government notified the Japanese

Government that an investigation was then in progress to assemble all the relevant information on the sinking and notified the Japanese Government that the United States Government could not accept, prior to the judicial determination of the question of responsibility, the charge of the Japanese Government that responsibility for the disaster lay with the United States Government.

On May 16, 1945 (received May 30), the Japanese Government formally demanded that the United States Government apologize to the Japanese Government for the sinking; punish those responsible; and indemnify the Japanese Government for the loss incurred.

The text of the Japanese statement dated May 16, 1945, transmitted through the Swiss Government, is as follows:

"With reference to the protest which the Japanese Government lodged with the United States Government through the Swiss Government under the date of the 26th of April against attacking and sinking of the *Awa Maru*, the Japanese Government while reserving all rights not hereby exercised to take any necessary action to cope with this violation of a solemn undertaking, make the following demands and request the United States Government to inform the Japanese Government without delay whether they are prepared promptly to comply with the same. Namely (one) that the United States Government apologize to the Japanese Government; (two) that the United States Government punish persons responsible and inform the Japanese Government thereof; (three) that the United States Government pay indemnities for the loss of lives of the crew and the passengers for the injury done to the survivors and for the loss of the vessel and of the goods which were on board.

"The Japanese Government by their note of 12th April addressed to Swiss Minister in Tokyo requested the United States Government to inform them fully of the circumstances in which the *Awa Maru* was attacked and sunk and to take adequate measures for the repatriation of the survivors at the earliest possible date. The Japanese Government request an early reply."



The text of this Government's communication of June 29 follows:

"The Japanese Government's further communication dated May 16 concerning the sinking of the *Awa Maru* has been received by the United States Government, which makes the following responses to the points raised therein:

"(1) The United States Government, in its communication forwarded through the Swiss Government dated April 10 and May 18, 1945, has already officially expressed its deep regret that this incident has occurred and that there was such a heavy loss of life in connection therewith.

"The official investigation into this disaster has now been concluded. It has been established that at the time the ship was sunk she was proceeding at night in a fog. There is, however, evidence that she was showing the prescribed lights. It appears that the ship was about eight miles off the course previously announced and was about 32 miles ahead of her predicted position. However, the difference between the ship's predicted position and the scene of the disaster is not considered unreasonable. The Commanding Officer of the submarine did not see the *Awa Maru* prior to or after she had been torpedoed, the attack having been made by means other than visual, which fact of itself disproves the charge that the attack was willful and deliberate. However, since it appears that the *Awa Maru* was complying substantially with the conditions of the safe-conduct agreement, the burden of establishing identity was that of the commander of the American submarine and in view of his failure to do so, the United States Government acknowledges responsibility for the sinking of the vessel.

"(2) Disciplinary action is being taken with respect to the commander of the American submarine concerned.

"(3) Because of the complex nature of the question of indemnity, this aspect of the matter cannot be resolved satisfactorily during the period of hostilities. It is suggested, therefore, that the matter of indemnity be deferred until the termination of hostilities. The Japanese Government may be assured that the United States Government will be prepared at that time to discuss all phases of the question of indemnity and will approach the question with an attitude of complete fairness and without regard to the political situation then existing.

"The survivor of the sinking, who is now being cared for by American authorities, will be repatriated to Japan as soon as

arrangements are perfected for further exchanges of nationals between Japan and the Allies."

In taking this action the United States Government not only took into consideration the facts as determined by the investigation but was also guided by the very real necessity of doing everything in its power to insure that future shipments of food, clothing, and medical supplies to Allied prisoners of war and civilian internees in Japanese custody would be facilitated by the Japanese Government.

Ever since the outbreak of the war in the Pacific, the Government of the United States with the other interested governments has made every effort to maintain a flow of essential relief supplies to Allied individuals in Japanese custody to supplement the inadequate supplies being furnished them. During 1942 and 1943 in connection with the exchange operations some relief supplies were sent in.

In 1944 there were no exchanges. However, the United States Government, deeply conscious of its responsibility to these unfortunate individuals, actively continued negotiations through the Swiss Government with a view to working out mutually satisfactory arrangements for the delivery by the Japanese of further relief supplies. These negotiations finally resulted in an arrangement whereby, through the cooperation of the Soviet authorities, such supplies were picked up at Nakhodka by a Japanese vessel. This vessel traveled under safe-conduct granted by this Government on behalf of itself and the other Allied governments. A portion of the shipment was distributed to American and other Allied prisoners of war and civilian internees in Japan. Subsequently the Japanese asked for and received safe-conduct for two vessels, one to proceed to Shanghai to carry a portion of the remainder of the supplies for prisoners of war

in that area and the other to proceed to the southern areas (Hong Kong, Singapore, et cetera) for a similar purpose. The vessel despatched to Shanghai completed its voyage. The other vessel, the *Awa Maru*, after carrying supplies for distribution to the southern areas, was sunk on its return trip to Japan.

The United States Government in accepting the responsibility for the sinking of the *Awa Maru* hopes that the Japanese Government will be willing to accept further shipments of relief supplies for distribution to Allied nationals detained by the Japanese.

### C. OFFER OF SHIP TO REPLACE "AWA MARU"

(Department of State Bulletin, Vol. XIII, No. 320, August 12, 1945)

In its press release of July 14, 1945, the Department of State made public the text of a telegram dated June 29 in reply to a further communication from the Japanese Government dated May 16 concerning the sinking by an American submarine of the Japanese vessel *Awa Maru* while returning, under Allied safe-conduct, from a voyage to Hong Kong, Singapore, and other ports, on which it carried as part of its cargo relief supplies furnished by the Allied Governments for Allied prisoners of war and civilian internees in Japanese custody.

This Government's communication of June 29 acknowledged responsibility for the sinking of the vessel and, as regards the Japanese demand for immediate indemnity, suggested that the matter of indemnity be deferred until the termination of hostilities, although assurances were given that the United States Government would be prepared at that time to discuss all phases of that question and would approach the matter with an attitude of complete fairness and without regard to the political situation then existing.



In a further effort to remove any obstacles in the way of completing arrangements whereby regular and continuous shipments of relief supplies may be made to Allied nationals in Japanese custody to supplement the inadequate supplies now being furnished them, the United States Government has now offered to transfer to the Japanese Government a ship having substantially the same characteristics as those of the *Awa Maru*, the transfer to be conditioned upon the agreement by the Japanese Government to employ the replacement vessel solely in connection with the transportation of relief supplies and mail and the movement of persons eligible for repatriation. In making this offer to the Japanese Government the United States Government stated that the ship is being offered not as a present indemnification for the *Awa Maru* but as a replacement for the sunken vessel in order that there might be no impediment in the way of the Japanese Government in giving immediate effect to its previously announced intention to continue to facilitate the shipment and distribution of relief supplies for Allied nationals.

The text of this Government's communication of July 31 follows:

"On sixth April 1945 an official Japanese spokesman, according to the Tokyo radio, announced to his press conference that the Japanese Government planned to send the *Awa Maru* on further voyages in connection with the forwarding and distribution of relief supplies sent from abroad for the benefit of Allied nationals in Japanese custody. Specifically, the spokesman stated that upon the completion of her then current voyage the ship would be sent to Nakhodka to pick up a further consignment of supplies and then would be utilized in distributing those supplies to areas outside Japan. From the general tenor of the announcement it was assumed the Japanese Government intended to continue to utilize the ship in this and other types of humanitarian service.

"The Allied Governments noted this statement with satisfaction as a further indication of a willingness on the part of the Japanese

Government to cooperate on a continuing basis in facilitating the shipment of relief supplies to Allied nationals in Japanese custody for whose welfare the Japanese Government under the Geneva Prisoners of War Convention has accepted responsibility. The Allied Governments interpreted this statement as an expression of the intention of the Japanese Government fully to reciprocate the observance by the Allied Governments of both the letter and spirit of the Geneva Convention.

"The United States Government realizes that the deplorable accidental sinking of the *Awa Maru* prevented the Japanese Government from giving immediate effect to its announced intention to continue to facilitate the shipment and distribution of relief supplies for Allied nationals. In order, therefore, to assist in overcoming this difficulty the United States Government makes the following offer to the Japanese Government, not as present indemnification for the *Awa Maru* (the suggestion having previously been made that owing to the complex nature of the question of indemnity, that matter might be deferred until the termination of hostilities) but as a replacement for the *Awa Maru* in its humanitarian service.

"The United States Government is prepared immediately to transfer to the Japanese Government a vessel described below of approximately the same size and characteristics as the *Awa Maru*, conditioned upon the express agreement by the Japanese Government to use the vessel so transferred for the following purposes and no others:

"(a) To operate between Japanese-controlled territory and a transfer point in or on the Pacific Ocean, to be designated by the United States Government, in the repatriation or exchange of Japanese and Allied civilians, seriously sick and seriously wounded prisoners of war, and surplus protected personnel.

"(b) To pick up at the Pacific transfer point, either in conjunction with the repatriation or exchange of nationals or otherwise, relief supplies and mail for Allied nationals in Japanese custody and to deliver such supplies and mail to the various areas where Allied nationals are located,

"(c) To transport relief supplies and mail for Japanese nationals in Allied custody from Japan to the Pacific transfer point. The United States Government will undertake the onward transportation of such supplies and mail from the transfer point; and also that the Japanese Government expressly agrees to the following conditions:

“(a) The vessel so transferred will at all times be painted and marked in a distinguishing manner; she will be fully illuminated at night, whether under way, at anchor, or at a wharf or pier, including searchlights trained upon side and deck markings,

“(b) As soon as possible, but not less than seven days in advance of departure, the Japanese Government will notify the Allies of any intended voyage of the vessel, including day and hour of departure, speed, course, and destination. While under way the vessel will report her position by radio at four-hour intervals. Between missions she will not be berthed at a wharf or pier, but will be anchored in a harbor as far from shore and from other shipping as possible. The Japanese Government will notify the Allies as far in advance as possible of the exact location of the ship while in waters under Japanese control between voyages,

“(c) The vessel will be under safe-conduct and safe-guard from both the Japanese and the Allied forces at all times and at all places during the continuance of hostilities in the present war.

“The characteristics of the vessel which the United States Government is prepared to transfer to the Japanese Government for the purposes and under the conditions enumerated above are as follows:

Gross tonnage .....	11,758
Draft .....	22 ft.
Deadweight tonnage .....	5,379
Speed .....	17 knots
Length .....	520 ft.
Beam .....	72 ft.
Approximate passenger capacity.....	2,500
Radius in miles .....	14,000
Year built .....	1944

“The vessel will be turned over to Japanese control at a point in the Pacific Ocean to be designated by the American authorities. Every effort will be made to recruit a crew from Japanese seamen in Allied custody. The United States Government will inform the Japanese Government as to such additional crew members as may be required to operate the ship. Such personnel may be sent from Japan to the transfer point by Japanese aircraft for which, on the outward and return journeys, the Allied Governments will be prepared to accord safe-conduct.

“Reports received by the Allied Governments emphasize the urgency of the immediate receipt by Allied prisoners of war and civilian internees in the Far East of supplemental food, medicines,



and clothing in order to prevent unnecessary loss of life and serious physical deterioration. It is, therefore, hoped that the Japanese Government will give this proposal its immediate attention and will convey to the United States Government at an early date the Japanese Government's acceptance thereof."

### **VIII. CHARTER OF THE UNITED NATIONS**

(The Department of State Bulletin, Vol. XII, No. 313, June 24, 1945)

#### **WE THE PEOPLES OF THE UNITED NATIONS DETERMINED**

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

#### **AND FOR THESE ENDS**

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to insure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

#### **HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS**

Accordingly, our respective Governments, through

representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

## **Chapter I: *Purposes and Principles***

### *Article 1*

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

### *Article 2*

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.



## Chapter II: *Membership*

### *Article 3*

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

### *Article 4*

1. Membership in the United Nations is open to all other peace-loving states which accepted the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

### *Article 5*

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

### *Article 6*

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

### **Chapter III: *Organs***

#### *Article 7*

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

#### *Article 8*

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

### **Chapter IV: *The General Assembly***

#### COMPOSITION

#### *Article 9*

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

#### FUNCTIONS AND POWERS

#### *Article 10*

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

*Article 11*

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

*Article 12*

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the



Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

### *Article 13*

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

### *Article 14*

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

### *Article 15*

1. The General Assembly shall receive and consider annual and special reports from the Security

Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

### *Article 16*

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

### *Article 17*

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

## VOTING

### *Article 18*

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the

election of the nonpermanent members of the Security Council the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

### *Article 19*

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

## PROCEDURE

### *Article 20*

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

### *Article 21*

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.



*Article 22*

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

**Chapter V: *The Security Council***

## COMPOSITION

*Article 23*

1. The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

## FUNCTIONS AND POWERS

*Article 24*

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the

Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

#### *Article 25*

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

#### *Article 26*

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

#### VOTING

#### *Article 27*

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

## PROCEDURE

### *Article 28*

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

### *Article 29*

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

### *Article 30*

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

### *Article 31*

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.



*Article 32*

Any Member of the United Nations which is not a member of the Security Council or any State which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a State which is not a Member of the United Nations.

**Chapter VI: *Pacific Settlement of Disputes****Article 33*

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

*Article 34*

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

*Article 35*

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred

to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A State which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

### *Article 36*

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

### *Article 37*

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it

shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

*Article 38*

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

**Chapter VII: *Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression***

*Article 39*

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

*Article 40*

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

*Article 41*

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call



upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

#### *Article 42*

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

#### *Article 43*

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

*Article 44*

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

*Article 45*

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

*Article 46*

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

*Article 47*

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the

Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

#### *Article 48*

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

#### *Article 49.*

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

#### *Article 50*

If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special eco-



conomic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

*Article 51*

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

**Chapter VIII: *Regional Arrangements***

*Article 52*

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes

through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

### *Article 53*

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

### *Article 54*

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

## Chapter IX: *International Economic and Social Cooperation*

### *Article 55*

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development.

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

### *Article 56*

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

### *Article 57*

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.



*Article 58*

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

*Article 59*

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any specialized agencies required for the accomplishment of the purposes set forth in Article 55.

*Article 60*

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

**Chapter X: *The Economic and Social Council***

## COMPOSITION

*Article 61*

1. The Economic and Social Council shall consist of eighteen Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate reelection.

3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at

the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

## FUNCTIONS AND POWERS

### *Article 62*

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

### *Article 63*

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

*Article 64*

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

*Article 65*

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

*Article 66*

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

**VOTING***Article 67*

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.



## PROCEDURE

*Article 68*

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

*Article 69*

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

*Article 70*

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

*Article 71*

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

*Article 72*

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet

as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

## **Chapter XI: *Declaration Regarding Non-Self-Governing Territories***

### *Article 73*

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General

for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

#### *Article 74*

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

### **Chapter XII: *International Trusteeship System***

#### *Article 75*

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

#### *Article 76*

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development toward self-government or independence as may be



appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to insure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

### *Article 77*

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy States as a result of the Second World War; and

c. territories voluntarily placed under the system by States responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

### *Article 78*

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

### *Article 79*

The terms of trusteeship for each territory to be

placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the States directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

### *Article 80*

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system; and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

### *Article 81*

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more States or the Organization itself.

### *Article 82*

There may be designated in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

### *Article 83*

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

### *Article 84*

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

### *Article 85*

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.



2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

### **Chapter XIII: *The Trusteeship Council***

#### COMPOSITION

##### *Article 86*

1. The Trusteeship Council shall consist of the following Members of the United Nations:

- a. those Members administering trust territories;
  - b. such of those Members mentioned by name in Article 23 as are not administering trust territories;
- and

c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

#### FUNCTIONS AND POWERS

##### *Article 87*

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust

territories at times agreed upon with the administering authority; and

d. take these and other actions in conformity with the terms of the trusteeship agreements.

### *Article 88*

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

## VOTING

### *Article 89*

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

## PROCEDURE

### *Article 90*

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

### *Article 91*

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

## Chapter XIV: *The International Court of Justice*

### *Article 92*

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

### *Article 93*

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

### *Article 94*

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

### *Article 95*

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.



*Article 96*

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

**Chapter XV: *The Secretariat****Article 97*

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

*Article 98*

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

*Article 99*

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

*Article 100*

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

*Article 101*

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

**Chapter XVI: *Miscellaneous Provisions****Article 102*

1. Every treaty and every international agreement entered into by any Member of the United Nations

after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

### *Article 103*

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

### *Article 104*

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

### *Article 105*

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.



**Chapter XVII: *Transitional Security Arrangements****Article 106*

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of the Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

*Article 107*

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

**Chapter XVIII: *Amendments****Article 108*

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

*Article 109*

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

**Chapter XIX: *Ratification and Signature****Article 110*

1. The present Charter shall be ratified by the signatory States in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory States of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory States. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory States.

4. The States signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

#### *Article 111*

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory States.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

#### STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

#### *Article 1*

THE INTERNATIONAL COURT OF JUSTICE established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.



## **Chapter I: *Organization of the Court***

### *Article 2*

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices or are juris-consults of recognized competence in international law.

### *Article 3*

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same State.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

### *Article 4*

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the

United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

### *Article 5*

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

### *Article 6*

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

### *Article 7*

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

*Article 8*

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

*Article 9*

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

*Article 10*

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

*Article 11*

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

*Article 12*

1. If, after the third meeting, one or more seats shall remain unfilled, a joint conference consisting



of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

### *Article 13*

1. The members of the Court shall be elected for nine years and may be reelected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been

filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

#### *Article 14*

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

#### *Article 15*

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

#### *Article 16*

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

#### *Article 17*

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of inquiry or international court,

or of a commission of inquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

### *Article 18*

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

### *Article 19*

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

### *Article 20*

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

### *Article 21*

1. The Court shall elect its President and Vice-President for three years; they may be reelected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

### *Article 22*

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.



*Article 23*

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

*Article 24*

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

*Article 25*

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

#### *Article 26*

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

2. Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

#### *Article 27*

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

#### *Article 28*

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

#### *Article 29*

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

#### *Article 30*

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

### *Article 31*

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.



*Article 32*

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

*Article 33*

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

**Chapter II: Competence of the Court***Article 34*

1. Only States may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organiza-

tions information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

### *Article 35*

1. The Court shall be open to the States parties to the present Statute.

2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a State which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute toward the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

### *Article 36*

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the

jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

### *Article 37*

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

### *Article 38*

1. The Court, whose function is to decide in ac-



cordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice adopted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

### **Chapter III: Procedure**

#### *Article 39*

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

*Article 40*

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

*Article 41*

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

*Article 42*

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

*Article 43*

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

#### *Article 44*

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

#### *Article 45*

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

#### *Article 46*

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

#### *Article 47*

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

#### *Article 48*

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make

all arrangements connected with the taking of evidence.

#### *Article 49*

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

#### *Article 50*

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

#### *Article 51*

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

#### *Article 52*

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

#### *Article 53*

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

#### *Article 54*

1. When, subject to the control of the Court, the



agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

#### *Article 55*

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

#### *Article 56*

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

#### *Article 57*

1. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

#### *Article 58*

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

#### *Article 59*

The decision of the Court has no binding force except between the parties and in respect of that particular case.

#### *Article 60*

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

*Article 61*

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

*Article 62*

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

*Article 63*

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene

in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

*Article 64*

Unless otherwise decided by the Court, each party shall bear its own costs.

**Chapter IV: *Advisory Opinions***

*Article 65*

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

*Article 66*

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

#### *Article 67*

The Court shall deliver its advisory opinion in open Court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

#### *Article 68*

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

### **Chapter V: *Amendment***

#### *Article 69*

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the



General Assembly upon recommendation of the Security Council may adopt concerning the participation of States which are parties to the present Statute but are not Members of the United Nations.

*Article 70*

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

INTERIM ARRANGEMENTS  
CONCLUDED BY THE GOVERNMENTS REPRESENTED AT  
THE UNITED NATIONS CONFERENCE ON  
INTERNATIONAL ORGANIZATION

The governments represented at the United Nations Conference on International Organization in the city of San Francisco,

Having determined that an international organization to be known as the United Nations shall be established.

Having this day signed the Charter of the United Nations, and

Having decided that, pending the coming into force of the Charter and the establishment of the United Nations as provided in the Charter, a Preparatory Commission of the United Nations should be established for the performance of certain functions and duties,

AGREE as follows:

1. There is hereby established a Preparatory Commission of the United Nations for the purpose of making provisional arrangements for the first sessions of the General Assembly, the Security Council, the Economic and Social Council, and the Trustee-

ship Council, for the establishment of the Secretariat, and for the convening of the International Court of Justice.

2. The Commission shall consist of one representative from each government signatory to the Charter. The Commission shall establish its own rules of procedure. The functions and powers of the Commission, when the Commission is not in session, shall be exercised by an Executive Committee composed of the representatives of those governments now represented on the Executive Committee of the Conference. The Executive Committee shall appoint such committees as may be necessary to facilitate its work, and shall make use of persons of special knowledge and experience.

3. The Commission shall be assisted by an Executive Secretary, who shall exercise such powers and perform such duties as the Commission may determine, and by such staff as may be required. This staff shall be composed as far as possible of officials appointed for this purpose by the participating governments on the invitation of the Executive Secretary.

4. The Commission shall:

a. convoke the General Assembly in its first session ;  
b. prepare the provisional agenda for the first sessions of the principal organs of the Organization, and prepare documents and recommendations relating to all matters on these agenda ;

c. formulate recommendations concerning the possible transfer of certain functions, activities, and assets of the League of Nations which it may be considered desirable for the new Organization to take over on terms to be arranged ;

d. examine the problems involved in the establishment of the relationship between specialized in-

tergovernmental organizations and agencies and the Organization;

e. issue invitations for the nomination of candidates for the International Court of Justice in accordance with the provisions of the Statute of the Court;

f. prepare recommendations concerning arrangements for the Secretariat of the Organization; and

g. make studies and prepare recommendations concerning the location of the permanent headquarters of the Organization.

5. The expenses incurred by the Commission and the expenses incidental to the convening of the first meeting of the General Assembly shall be met by the Government of the United Kingdom of Great Britain and Northern Ireland or, if the Commission so requests, shared by other Governments. All such advances from governments shall be deductible from their first contributions to the Organization.

6. The seat of the Commission shall be located in London. The Commission shall hold its first meeting in San Francisco immediately after the conclusion of the United Nations Conference on International Organization. The Executive Committee shall call the Commission into session again as soon as possible after the Charter of the Organization comes into effect and whenever subsequently it considers such a session desirable.

7. The Commission shall cease to exist upon the election of the Secretary-General of the Organization, at which time its property and records shall be transferred to the Organization.

8. The Government of the United States of America shall be the temporary depositary and shall have custody of the original document embodying these interim arrangements in the five languages in which it is signed. Duly certified copies thereof shall be

transmitted to the governments of the signatory states. The Government of the United States of America shall transfer the original to the Executive Secretary on his appointment.

9. This document shall be effective as from this date, and shall remain open for signature by the states entitled to be the original Members of the United Nations until the Commission is dissolved in accordance with paragraph 7.

In faith whereof, the undersigned representatives having been duly authorized for that purpose, sign this document in the English, French, Chinese, Russian, and Spanish languages, all texts being of equal authenticity.

Done in the City of San Francisco, this twenty-sixth day of June, 1945.

#### **IX. INSTRUMENTS OF GERMAN SURRENDER**

##### **A. ALL GERMAN ARMED FORCES IN HOLLAND, NORTHWEST GERMANY AND DENMARK**

(The Department of State Bulletin, Vol. XII, No. 317, July 22, 1945)

1. The German Command agrees to the surrender of all German armed forces in HOLLAND, in northwest GERMANY including the FRISIAN ISLANDS and HELIGOLAND and all other islands, in SCHLESWIG-HOLSTEIN, and in DENMARK, to the C.-in-C. 2 Army Group. This to include all naval ships in these areas. These forces to lay down their arms and to surrender unconditionally.

2. All hostilities on land, on sea, or in the area by German forces in the above areas to cease at 0800 hrs. British Double Summer Time on Saturday 5 May 1945.

3. The German command to carry out at once, and without argument or comment, all further orders that will be issued by the Allied Powers on any subject.



4. Disobedience of orders, or failure to comply with them, will be regarded as a breach of these surrender terms and will be dealt with by the Allied Powers in accordance with the accepted laws and usages of war.

5. This instrument of surrender is independent of, without prejudice to, and will be superseded by any general instrument of surrender imposed by or on behalf of the Allied Powers and applicable to Germany and the German armed forces as a whole.

6. This instrument of surrender is written in English and in German. The English version is the authentic text.

7. The decision of the Allied Powers will be final if any doubt or dispute arises as to the meaning of interpretation of the surrender terms.

B. L. MONTGOMERY

*Field Marshal*

4 May 1945

1830 hrs.

FRIEDEBURG.

KINSEL.

G. WAGNER.

POLECK.

FRIEDEL.

#### **B. ACT OF MILITARY SURRENDER (RHEIMS)**

1. We the undersigned, acting by authority of the German High Command, hereby surrender unconditionally to the Supreme Commander Allied Expeditionary Force and simultaneously to the Soviet High Command all forces on land, sea, and in the air who are at this date under German control.

2. The German High Command will at once issue orders to all German military, naval and air authorities and to all forces under German control to cease active operations at 2301 hours Central European time on 8 May and to remain in the positions occupied at that time. No ship, vessel, or aircraft is to be scuttled, or any damage done to their hull, machinery or equipment.

3. The German High Command will at once issue to the appropriate commanders, and ensure the carrying out of any further orders issued by the Supreme Commander, Allied Expeditionary Force and by the Soviet High Command.

4. This act of military surrender is without prejudice to, and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to GERMANY and the German armed forces as a whole.

5. In the event of the German High Command or any of the forces under their control failing to act in accordance with this Act of Surrender, the Supreme Commander, Allied Expeditionary Force and the Soviet High Command will take such punitive or other action as they deem appropriate.

Signed at Rheims at 0241 on the 7th day of May, 1945.

France

On behalf of the German High Command.

JODL

IN THE PRESENCE OF:

On behalf of the Supreme  
Commander, Allied Ex-  
peditionary Force.

W. B. SMITH

F. SEVEZ

Major General, French Army  
(Witness)

On behalf of the Soviet  
High Command.  
SOUSLOPAROV.

### C. ACT OF MILITARY SURRENDER (BERLIN)

1. We the undersigned, acting by authority of the German High Command, hereby surrender unconditionally to the Supreme Commander, Allied Expeditionary Force and simultaneously to the Supreme High Command of the Red Army all forces on land,

at sea, and in the air who are at this date under German control.

2. The German High Command will at once issue orders to all German military, naval and air authorities and to all forces under German control to cease active operations at 2301 hours Central European time on 8th May 1945, to remain in the positions occupied at that time and to disarm completely, handing over their weapons and equipment to the local allied commanders or officers designated by Representatives of the Allied Supreme Commands. No ship, vessel, or aircraft is to be scuttled, or any damage done to their hull, machinery or equipment, and also to machines of all kinds, armament, apparatus, and all the technical means of prosecution of war in general.

3. The German High Command will at once issue to the appropriate commanders, and ensure the carrying out of any further orders issued by the Supreme Commander, Allied Expeditionary Force and by the Supreme High Command of the Red Army.

4. This act of military surrender is without prejudice to, and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to GERMANY and the German armed forces as a whole.

5. In the event of the German High Command or any of the forces under their control failing to act in accordance with this Act of Surrender, the Supreme Commander, Allied Expeditionary Force and the Supreme High Command of the Red Army will take such punitive or other action as they deem appropriate.

6. This Act is drawn up in the English, Russian and German languages. The English and Russian are the only authentic texts.

Signed at Berlin on the 8. day of May, 1945

FRIEDEBURG      KEITEL      STUMPF

On behalf of the German High Command

IN THE PRESENCE OF:

On behalf of the

Supreme Commander

Allied Expeditionary Force

A W TEDDER

On behalf of the

Supreme High Command

of the Red Army

G ZHUKOV

At the signing also were present as witnesses:

F. DE LATTRE-TASSIGNY

General Commanding in Chief

First French Army

CARL SPAATZ

General, Commanding

United States Strategic Air Forces

## X. PROCLAMATION DEFINING TERMS FOR JAPANESE SURRENDER

(The Department of State Bulletin, Vol. XIII, No. 318, July 29, 1945)

(1) We—the President of the United States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain, representing the hundreds of millions of our countrymen, have conferred and agree that Japan shall be given an opportunity to end this war.

(2) The prodigious land, sea and air forces of the United States, the British Empire and of China, many times reinforced by their armies and air fleets from the west, are poised to strike the final blows upon Japan. This military power is sustained and inspired by the determination of all the Allied Nations to prosecute the war against Japan until she ceases to resist.

(3) The result of the futile and senseless German resistance to the might of the aroused free peoples of the world stands forth in awful clarity as an example to the people of Japan. The might that now converges on Japan is immeasurably greater than that which, when applied to the resisting Nazis,



necessarily laid waste to the lands, the industry and the method of life of the whole German people. The full application of our military power, backed by our resolve, *will* mean the inevitable and complete destruction of the Japanese armed forces and just as inevitably the utter devastation of the Japanese homeland.

(4) The time has come for Japan to decide whether she will continue to be controlled by those self-willed militaristic advisers whose unintelligent calculations have brought the Empire of Japan to the threshold of annihilation, or whether she will follow the path of reason.

(5) Following are our terms. We will not deviate from them. There are no alternatives. We shall brook no delay.

(6) There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

(7) Until such a new order is established *and* until there is convincing proof that Japan's war-making power is destroyed, points in Japanese territory to be designated by the Allies shall be occupied to secure the achievement of the basic objectives we are here setting forth.

(8) The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.

(9) The Japanese military forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives.

(10) We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion and of thought, as well as respect for the fundamental human rights, shall be established.

(11) Japan shall be permitted to maintain such industries as will sustain her economy and permit the exaction of just reparations in kind, but not those which would enable her to rearm for war. To this end, access to, as distinguished from control of, raw materials shall be permitted. Eventual Japanese participation in world trade relations shall be permitted.

(12) The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established, in accordance with the freely expressed will of the Japanese people, a peacefully inclined and responsible Government.

(13) We call upon the Government of Japan to proclaim now the unconditional surrender of all Japanese armed forces, and to provide proper and adequate assurances of their good faith in such action. The alternative for Japan is prompt and utter destruction.

## XI. THE POTSDAM DECLARATION

(New York Times, Aug. 3, 1945)

### REPORT ON THE TRIPARTITE CONFERENCE OF BERLIN

On July 17, 1945, the President of the United States of America, Harry S. Truman; the Chairman of the Council of People's Commissars of the Union of Soviet Socialist Republics, Generalissimo J. V. Stalin, and the Prime Minister of Great Britain, Winston S. Churchill, together with Mr. Clement R. Attlee, met in the Tripartite Conference of Berlin. They were accompanied by the Foreign Secretaries of the three Governments, Mr. James F. Byrnes, Mr. V. M. Molotoff, and Mr. Anthony Eden, the Chief of Staff, and other advisers.

There were nine meetings between July 17 and July 25. The Conference was then interrupted for two days while the results of the British general election were being declared.

On July 28 Mr. Attlee returned to the Conference as Prime Minister, accompanied by the new Secretary of State for Foreign Affairs, Mr. Ernest Bevin. Four days of further discussion then took place. During the course of the Conference there were regular meetings of the heads of the three Governments accompanied by the Foreign Secretaries, and also of the Foreign Secretaries alone. Committees appointed by the Foreign Secretaries for preliminary consideration of questions before the Conference also met daily.

The meetings of the Conference were held at the Cecilienhof, near Potsdam. The Conference ended on Aug. 2, 1945.

Important decisions and agreements were reached. Views were exchanged on a number of other questions and consideration of these matters will be con-

tinued by the Council of Foreign Ministers established by the Conference.

President Truman, Generalissimo Stalin and Prime Minister Attlee leave this Conference, which has strengthened the ties between the three Governments and extended the scope of their collaboration and understanding, with renewed confidence that their Governments and peoples, together with the other United Nations, will insure the creation of a just and enduring peace.

#### ESTABLISHMENT OF A COUNCIL OF FOREIGN MINISTERS

The Conference reached an agreement for the establishment of a Council of Foreign Ministers representing the five principal powers to continue the necessary preparatory work for the peace settlements and to take up other matters which from time to time may be referred to the Council by agreement of the Governments participating in the Council.

The text of the agreement for the establishment of the Council of Foreign Ministers is as follows:

1. There shall be established a Council composed of the Foreign Ministers of the United Kingdom, the Union of the Soviet Socialist Republics, China, France and the United States.

2. (I) The Council shall normally meet in London, which shall be the permanent seat of the Joint Secretariat which the Council will form. Each of the Foreign Ministers will be accompanied by a high-ranking deputy, duly authorized to carry on the work of the Council in the absence of his Foreign Minister, and by a small staff of technical advisers.

- (II) The first meeting of the Council shall be held in London not later than Sept. 1, 1945. Meetings may be held by common agreement in other capitals as may be agreed from time to time.



3. (I) As its immediate important task the Council shall be authorized to draw up, with a view to their submission to the United Nations, treaties of peace with Italy, Rumania, Bulgaria, Hungary and Finland, and to propose settlements of territorial questions outstanding on the termination of the war in Europe. The Council shall be utilized for the preparation of a peace settlement for Germany to be accepted by the government of Germany when a government adequate for the purpose is established.

(II) For the discharge of each of these tasks the Council will be composed of the members representing those states which were signatory to the terms of surrender imposed upon the enemy state concerned. For the purpose of the peace settlement for Italy, France shall be regarded as a signatory to the terms of surrender for Italy. Other members will be invited to participate when matters directly concerning them are under discussion.

(III) Other matters may from time to time be referred to the Council by agreement between the member Governments.

#### OUTSIDE STATES TO BE INVITED

4. (I) Whenever the Council is considering a question of direct interest to a State not represented thereon, such State should be invited to send representatives to participate in the discussion and study of that question.

(II) The Council may adapt its procedure to the particular problem under consideration. In some cases it may hold its own preliminary discussions prior to the participation of other interested states. In other cases, the Council may convoke a formal conference of the state chiefly interested in seeking a solution of the particular problem.

In accordance with the decision of the Conference the three Governments have each addressed an identical invitation to the Governments of China and France to adopt this text and to join in establishing the Council.

The establishment of the Council of Foreign Ministers for the specific purposes named in the text will be without prejudice to the agreement of the Crimea conference that there should be periodic consultation among the foreign secretaries of the United States, the Union of Soviet Socialist Republics and the United Kingdom.

The conference also considered the position of the European Advisory Commission in the light of the agreement to establish the Council of Foreign Ministers. It was noted with satisfaction that the commission had ably discharged its principal task by the recommendations that it had furnished for the terms of Germany's unconditional surrender, for the zones of occupation in Germany and Austria, and for the inter-Allied control machinery in those countries. It was felt that further work of a detailed character for the coordination of Allied policy for the control of Germany and Austria would in future fall within the competence of the Allied control council at Berlin and the Allied commission at Vienna. Accordingly, it was agreed to recommend that the European Advisory Commission be dissolved.

## GERMANY

The Allied armies are in occupation of the whole of Germany and the German people have begun to atone for the terrible crimes committed under the leadership of those whom in the hour of their success, they openly approved and blindly obeyed.

Agreement has been reached at this conference on

the political and economic principles of a coordinated Allied policy toward defeated Germany during the period of Allied control.

The purpose of this agreement is to carry out the Crimea Declaration on Germany. German militarism and nazism will be extirpated and the Allies will take in agreement together, now and in the future, the other measures necessary to assure that Germany never again will threaten her neighbors or the peace of the world.

It is not the intention of the Allies to destroy or enslave the German people. It is the intention of the Allies that the German people be given the opportunity to prepare for the eventual reconstruction of their life on a democratic and peaceful basis. If their own efforts are steadily directed to this end, it will be possible for them in due course to take their place among the free and peaceful peoples of the world.

The text of the agreement is as follows:

## THE POLITICAL AND ECONOMIC PRINCIPLES TO GOVERN THE TREATMENT OF GERMANY IN THE INITIAL CONTROL PERIOD

### A. POLITICAL PRINCIPLES.

1. In accordance with the agreement on control machinery in Germany, supreme authority in Germany is exercised on instructions from their respective Governments, by the Commander in Chief of the Armed Forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics, and the French Republic, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the Control Council.

2. So far as is practicable, there shall be uniformity

of treatment of the German population throughout Germany.

3. The purposes of the occupation of Germany by which the Control Council shall be guided are:

(I) The complete disarmament and demilitarization of Germany and the elimination or control of all German industry that could be used for military production. To these ends:

(A) All German land, naval and air forces, the S.S., S.A., S.D., and Gestapo, with all their organizations, staffs and institutions, including the general staff, the officers' corps, reserve corps, military schools, war veterans' organizations and all other military and quasi-military organizations, together with all clubs and associations which serve to keep alive the military tradition in Germany, shall be completely and finally abolished in such manner as permanently to prevent the revival or reorganization of German militarism and nazism.

(B) All arms, ammunition and implements of war and all specialized facilities for their production shall be held at the disposal of the Allies or destroyed. The maintenance and production of all aircraft and all arms, ammunition and implements of war shall be prevented.

(II) To convince the German people that they have suffered a total military defeat and that they cannot escape responsibility for what they have brought upon themselves, since their own ruthless warfare and the fanatical Nazi resistance have destroyed German economy and made chaos and suffering inevitable.

(III) To destroy the National Socialist Party and its affiliated and supervised organizations, to dissolve all Nazi institutions, to insure that they are not re-



vived in any form, and to prevent all Nazi and militarist activity or propaganda.

(IV) To prepare for the eventual reconstruction of German political life on a democratic basis and for eventual peaceful cooperation in international life by Germany.

4. All Nazi laws which provided the basis of the Hitler regime or established discrimination on grounds of race, creed, or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated.

5. War criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment. Nazi leaders, influential Nazi supporters and high officials of Nazi organizations and institutions and any other persons dangerous to the occupation or its objectives shall be arrested and interned.

6. All members of the Nazi party who have been more than nominal participants in its activities and all other persons hostile to Allied purposes shall be removed from public and semi-public office and from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany.

7. German education shall be so controlled as completely to eliminate Nazi and militarist doctrines and to make possible the successful development of democratic ideas.

#### TO REORGANIZE JUDICIAL SYSTEM

8. The judicial system will be reorganized in accordance with the principles of democracy, of justice

under law, and of equal rights for all citizens without distinction of race, nationality or religion.

9. The administration of affairs in Germany should be directed toward the decentralization of the political structure and the development of local responsibility. To this end:

(I) Local self-government shall be restored throughout Germany on democratic principles and in particular through elective councils as rapidly as is consistent with military security and the purposes of military occupation;

(II) All democratic political parties with rights of assembly and of public discussions shall be allowed and encouraged throughout Germany;

(III) Representatives and elective principles shall be introduced into regional, provincial and state (land) administration as rapidly as may be justified by the successful application of these principles in local self-government;

(IV) For the time being no central German Government shall be established. Notwithstanding this, however, certain essential central German administrative departments, headed by state secretaries, shall be established, particularly in the fields of finance, transport, communications, foreign trade and industry. Such departments will act under the direction of the Control Council.

10. Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious institutions shall be respected. Subject likewise to the maintenance of military security, the formation of free trade unions shall be permitted.

## B. ECONOMIC PRINCIPLES

11. In order to eliminate Germany's war potential, the production of arms, ammunition and implements of war as well as all types of aircraft and sea-going ships shall be prohibited and prevented. Production of metals, chemicals, machinery and other items that are directly necessary to a war economy shall be rigidly controlled and restricted to Germany's approved post-war peacetime needs to meet the objectives stated in Paragraph 15. Productive capacity not needed for permitted production shall be removed in accordance with the reparations plans recommended by the Allied Commission on reparations and approved by the Governments concerned, or if not removed shall be destroyed.

12. At the earliest practicable date the German economy shall be decentralized for the purpose of eliminating the present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements.

13. In organizing the German economy, primary emphasis shall be given to the development of agriculture and peaceful domestic industries.

14. During the period of occupation Germany shall be treated as a single economic unit. To this end common policies shall be established in regard to:

(A) Mining and industrial production and allocations;

(B) Agriculture, forestry and fishing;

(C) Wages, prices and rationing;

(D) Import and export program for Germany as a whole;

(E) Currency and banking, central taxation and customs;

(F) Reparation and removal of industrial war potential;

(G) Transportation and communications.

In applying these policies account shall be taken, where appropriate, of varying local conditions.

15. Allied controls shall be imposed upon the German economy, but only to the extent necessary;

(A) To carry out programs of industrial disarmament and demilitarization, of reparations, and of approved exports and imports.

(B) To assure the production and maintenance of goods and services required to meet the needs of the occupying forces and displaced persons in Germany, and essential to maintain in Germany average living standards not exceeding the average of the standards of living of European countries. (European countries means all European countries, excluding the United Kingdom and the Union of Soviet Socialist Republics.)

(C) To insure in the manner determined by the Control Council the equitable distribution of essential commodities between the several zones so as to produce a balanced economy throughout Germany and reduce the need for imports.

(D) To control German industry and all economic and financial international transactions, including exports and imports, with the aim of preventing Germany from developing a war potential and of achieving the other objectives named herein.

(E) To control all German public or private scientific bodies, research and experimental institutions, laboratories, etc., connected with economic activities.

#### GERMANS TO RUN THINGS

16. In the imposition and maintenance of economic controls established by the Control Council German



administrative machinery shall be created and the German authorities shall be required to the fullest extent practicable to proclaim and assume administration of such controls. Thus it should be brought home to the German people that the responsibility for the administration of such controls and any breakdown in these controls will rest with themselves. Any German controls which may run counter to the objective of occupation will be prohibited.

17. Measures shall be promptly taken :

- (A) To effect essential repair of transport;
- (B) To enlarge coal production;
- (C) To maximize agriculture output; and
- (D) To effect emergency repair of housing and essential utilities.

18. Appropriate steps shall be taken by the Control Council to exercise control and the power of disposition over German-owned external assets not already under the control of United Nations which have taken part in the war against Germany.

19. Payment of reparations should leave enough resources to enable the German people to subsist without external assistance. In working out the economic balance of Germany the necessary means must be provided to pay for imports approved by the Control Council in Germany. The proceeds of exports from current production and stocks shall be available in the first place for payment for such imports.

The above clause will not apply to the equipment and products referred to in Paragraphs 4 (A) and 4 (B) of the reparations agreement.

#### REPARATIONS FROM GERMANY

In accordance with the Crimea decision that Germany be compelled to compensate to the greatest possible extent for the loss and suffering that she has

caused to the United Nations and for which the German people cannot escape responsibility, the following agreement on reparations was reached:

1. Reparation claims of the U.S.S.R. shall be met by removals from the zone of Germany occupied by the U.S.S.R. and from appropriate German external assets.

2. The U.S.S.R. undertakes to settle the reparation claims of Poland from its own share of reparations.

3. The reparation claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the western zones and from appropriate German external assets.

4. In addition to the reparations to be taken by the U.S.S.R. from its own zone of occupation, the U.S.S.R. shall receive additionally from the western zones:

(A) Fifteen per cent of such usable and complete industrial capital equipment, in the first place from the metallurgical, chemical and machine manufacturing industries, as is unnecessary for the German peace economy and should be removed from the western zones of Germany, in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products and such other commodities as may be agreed upon.

(B) Ten per cent of such industrial capital equipment as is unnecessary for the German peace economy and should be removed from the western zones, to be transferred to the Soviet Government on reparations account without payment or exchange of any kind in return.

Removals of equipment as provided in (A) and (B) above shall be made simultaneously.

## REPARATIONS SET IN SIX MONTHS

5. The amount of equipment to be removed from the western zones on account of reparations must be determined within six months from now at the latest.

6. Removals of industrial capital equipment shall begin as soon as possible and shall be completed within two years from the determination specified in Paragraph 5. The delivery of products covered by 4 (A) above shall begin as soon as possible and shall be made by the U.S.S.R. in agreed installments within five years of the date hereof. The determination of the amount and character of the industrial capital equipment unnecessary for the German peace economy and therefore available for reparations shall be made by the Control Council under policies fixed by the Allied Commission on Reparations, with the participation of France, subject to the final approval of the zone commander in the zone from which the equipment is to be removed.

7. Prior to the fixing of the total amount of equipment subject to removal, advance deliveries shall be made in respect of such equipment as will be determined to be eligible for delivery in accordance with the procedure set forth in the last sentence of Paragraph 6.

8. The Soviet Government renounces all claims in respect of reparations to shares of German enterprises which are located in the western zones of occupation in Germany, as well as to German foreign assets in all countries, except those specified in Paragraph 9 below.

9. The Governments of the United Kingdom and the United States of America renounce their claims in respect of reparations to shares of German enterprises which are located in the Eastern Zone of occu-

pation in Germany, as well as to German foreign assets in Bulgaria, Finland, Hungary, Rumania and eastern Austria.

10. The Soviet Government makes no claims to gold captured by the Allied troops in Germany.

#### DISPOSAL OF THE GERMAN NAVY AND MERCHANT MARINE

The Conference agreed in principle upon arrangements for the use and disposal of the surrendered German Fleet and merchant ships. It was decided that the three governments would appoint experts to work out together detailed plans to give effect to the agreed principles. A further joint statement will be published simultaneously by the three governments in due course.

#### CITY OF KOENIGSBERG AND THE ADJACENT AREA

The Conference examined a proposal by the Soviet Government that pending the final determination of territorial questions at the peace settlement the section of the western frontier of the Union of Soviet Socialist Republics which is adjacent to the Baltic Sea should pass from a point on the eastern shore of the Bay of Danzig to the east, north of Braunsberg-Goldap, to the meeting point of the frontiers of Lithuania, the Polish Republic and East Prussia.

The Conference has agreed in principle to the proposal of the Soviet Government concerning the ultimate transfer to the Soviet Union of the city of Koenigsberg and the area adjacent to it as described above, subject to expert examination of the actual frontier.

The President of the United States and the British Prime Minister have declared that they will support the proposal of the Conference at the forthcoming peace settlement.



## WAR CRIMINALS

The three governments have taken note of the discussions which have been proceeding in recent weeks in London between British, United States, Soviet and French representatives with a view to reaching agreement on the methods of trial of those major war criminals whose crimes under the Moscow Declaration of October, 1943, have no particular geographical localization.

The three governments reaffirm their intention to bring those criminals to swift and sure justice. They hope that the negotiations in London will result in speedy agreement being reached for this purpose, and they regard it as a matter of great importance that the trial of those major criminals should begin at the earliest possible date. The first list of defendants will be published before September 1.

## AUSTRIA

The conference examined a proposal by the Soviet Government on the extension of the authority of the Austrian Provisional Government to all of Austria.

The three governments agreed that they were prepared to examine this question after the entry of the British and American forces into the city of Vienna.

## POLAND

The conference considered questions relating to the Polish Provisional Government and the western boundary of Poland.

On the Polish Provisional Government of National Unity they defined their attitude in the following statement:

A—We have taken note with pleasure of the agreement reached among representative Poles from Poland and abroad which has made possible the

formation, in accordance with the decisions reached at the Crimea Conference, of a Polish Provisional Government of National Unity recognized by the three Powers. The establishment by the British and United States Governments of diplomatic relations with the Polish Provisional Government has resulted in the withdrawal of their recognition from the former Polish Government in London, which no longer exists.

The British and United States Governments have taken measures to protect the interest of the Polish Provisional Government, as the recognized Government of the Polish State, in the property belonging to the Polish State located in their territories and under their control, whatever the form of this property may be. They have further taken measures to prevent alienation to third parties of such property. All proper facilities will be given to the Polish Provisional Government for the exercise of the ordinary legal remedies for the recovery of any property belonging to the Polish State which may have been wrongfully alienated.

The three Powers are anxious to assist the Polish Provisional Government in facilitating the return to Poland as soon as practicable of all Poles abroad who wish to go, including members of the Polish armed forces and the merchant marine. They expect that those Poles who return home shall be accorded personal and property rights on the same basis as all Polish citizens.

#### ALLIED PRESS TO SEE POLAND

The three powers note that the Polish Provisional Government, in accordance with the decisions of the Crimea Conference, has agreed to the holding of free and unfettered elections as soon as possible on

the basis of universal suffrage and secret ballot in which all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates, and that representatives of the Allied press shall enjoy full freedom to report to the world upon developments in Poland before and during the elections.

B—The following agreement was reached on the western frontier of Poland:

In conformity with the agreement on Poland reached at the Crimea Conference the three heads of Government have sought the opinion of the Polish Provisional Government of National Unity in regard to the accession of territory in the north and west which Poland should receive. The president of the National Council of Poland and members of the Polish Provisional Government of National Unity have been received at the conference and have fully presented their views. The three heads of Government reaffirm their opinion that the final delimitation of the western frontier of Poland should await the peace settlement.

The three heads of Government agree that, pending the final determination of Poland's western frontier, the former German territories east of a line running from the Baltic Sea immediately west of Swinemunde, and thence along the Oder River to the confluence of the western Neisse River and along the western Neisse to the Czechoslovak frontier, including that portion of East Prussia not placed under the administration of the Union of Soviet Socialist Republics in accordance with the understanding reached at this Conference and including the area of the former free city of Danzig; shall be under the administration of the Polish State and for such purposes should not be considered as part of the Soviet zone of occupation in Germany.

## CONCLUSION OF PEACE TREATIES AND ADMISSION TO THE UNITED NATIONS ORGANIZATION

The Conference agreed upon the following statement of common policy for establishing, as soon as possible, the conditions of lasting peace after victory in Europe:

The three Governments consider it desirable that the present anomalous position of Italy, Bulgaria, Finland, Hungary and Rumania should be terminated by the conclusion of peace treaties. They trust that the other interested Allied Governments will share these views.

For their part, the three Governments have included the preparation of a peace treaty for Italy as the first among the immediate important tasks to be undertaken by the new Council of Foreign Ministers. Italy was the first of the Axis powers to break with Germany, to whose defeat she has made a material contribution, and has now joined with the Allies in the struggle against Japan.

Italy has freed herself from the Fascist regime and is making good progress toward the re-establishment of a democratic government and institutions. The conclusion of such a peace treaty with a recognized and democratic Italian Government will make it possible for the three Governments to fulfill their desire to support an application from Italy for membership of the United Nations.

The three Governments have also charged the Council of Foreign Ministers with the task of preparing peace treaties for Bulgaria, Finland, Hungary and Rumania.

The conclusion of peace treaties with recognized democratic governments in these states will also enable the three Governments to support applications from them for membership of the United Nations. The



three Governments agree to examine, each separately in the near future, in the light of the conditions then prevailing, the establishment of diplomatic relations with Finland, Rumania, Bulgaria and Hungary to the extent possible prior to the conclusion of peace treaties with those countries.

The three Governments have no doubt that in view of the changed conditions resulting from the termination of the war in Europe, representatives of the Allied press will enjoy full freedom to report to the world upon developments in Rumania, Bulgaria, Hungary and Finland.

As regards the admission of other States into the United Nations organization, Article 4 of the Charter of the United Nations declared that:

"1. Membership in the United Nations is open to all other peace-loving States who accept the obligations contained in the present Charter and, in the judgment of the organization, are able and willing to carry out these obligations;

"2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

The three Governments, so far as they are concerned, will support applications for membership from those States which have remained neutral during the war and which fulfill the qualifications set out above.

The three Governments feel bound however to make it clear that they for their part would not favor any application for membership put forward by the present Spanish Government, which, having been founded with the support of the Axis Powers, does not, in view of its origins, its nature, its record and its close association with the aggressor States, possess

the qualifications necessary to justify such membership.

### TERRITORIAL TRUSTEESHIP

The conference examined a proposal by the Soviet Government concerning trusteeship territories as defined in the decision of the Crimea Conference and in the Charter of the United Nations Organization.

After an exchange of views on this question it was decided that the disposition of any former Italian territories was one to be decided in connection with the preparation of a peace treaty for Italy and that the question of Italian territory would be considered by the September council of Ministers of Foreign Affairs.

### REVISED ALLIED CONTROL COMMISSION PROCEDURE IN RUMANIA, BULGARIA, AND HUNGARY

The three Governments took note that the Soviet representatives on the Allied Control Commissions in Rumania, Bulgaria and Hungary have communicated to their United Kingdom and United States colleagues proposals for improving the work of the control commission, now that hostilities in Europe have ceased.

The three Governments agreed that the revision of the procedures of the Allied Control Commissions in these countries would now be undertaken, taking into account the interests and responsibilities of the three Governments which together presented the terms of armistice to the respective countries, and accepting as a basis the agreed proposals.

### ORDERLY TRANSFERS OF GERMAN POPULATIONS

The conference reached the following agreement on the removal of Germans from Poland, Czechoslovakia and Hungary:

The three Governments having considered the

question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner.

Since the influx of a large number of Germans into Germany would increase the burden already resting on the occupying authorities, they consider that the Allied Control Council in Germany should in the first instance examine the problem with special regard to the question of the equitable distribution of these Germans among the several zones of occupation. They are accordingly instructing their respective representatives on the control council to report to their Governments as soon as possible the extent to which such persons have already entered Germany from Poland, Czechoslovakia and Hungary, and to submit an estimate of the time and rate at which further transfers could be carried out, having regard to the present situation in Germany.

The Czechoslovak Government, the Polish Provisional Government and the control council in Hungary are at the same time being informed of the above and are being requested meanwhile to suspend further expulsions pending the examination by the Governments concerned of the report from their representatives on the control council.

#### MILITARY TALKS

During the conference there were meetings between the Chiefs of Staff of the three Governments on military matters of common interest.

Approved:

J. V. STALIN,  
HARRY S. TRUMAN,  
C. R. ATTLEE.

## **XII. SPECIAL ORDERS BY THE SUPREME COMMANDER, ALLIED EXPEDITIONARY FORCE TO THE GERMAN HIGH COMMAND RELATING TO NAVAL FORCES**

(The Department of State Bulletin, Vol. XIII, No. 319, August 5, 1945)

For the purpose of these orders the term "Allied Representatives" shall be deemed to include the Supreme Commander, Allied Expeditionary Force, and any subordinate commander, staff officer or agent acting pursuant to his orders.

### **SPECIAL ORDERS BY THE SUPREME COMMANDER, ALLIED EXPEDITIONARY FORCE TO THE GERMAN HIGH COM- MAND RELATING TO NAVAL FORCES**

#### **PART I. GENERAL**

##### *Definition of Naval Forces*

1. For the purpose of these orders all formations, units and personnel of the German Navy together with the Marine Kusten Polizei shall be referred to as the German Naval Forces.

2. Members of the Marine Kusten Polizei will immediately be placed under the command of the appropriate German Naval Commanders who will be responsible for their disarmament and discipline, as well as for their maintenance and supply where applicable, to the same extent and degree as for units of the German Navy.

##### *German Naval Representatives and information re- quired immediately*

3. The German High Command will despatch within 48 hours after the surrender becomes effective, a responsible Flag Officer to the Allied Naval Commander, Expeditionary Force at his Headquar-



ters. This Flag Officer will furnish the Allied Naval Commander, Expeditionary Force, with:

- a. Corrected copies of charts showing all minefields in Western European waters, including the BALTIC as far as LUBECK (inclusive) which have been laid by German and German-controlled vessels or aircraft, positions of all wrecks, booms and other underwater obstructions in this area, details of the German convoy routes and searched channels and of all buoys, lights and other navigational aids in this area. The appropriate navigational publications are also required.

- b. Details of the exact location of all departments and branches of the German Admiralty (OKM).

- c. All available information concerning the numbers and types of German minesweepers and sperrbrechers in German controlled Dutch ports and German NORTH SEA ports that can be obtained without delaying his departure. This German Flag Officer is to be accompanied by a Communications Officer who is familiar with the German Naval W/T organization and who is to bring with him the current naval communication Orders, including allocation of frequencies, list of W/T and R/T call signs in force, and a list of all codes and cyphers in use, and intended to be brought into use.

- d. Location of all surface warships down to and including "Elbing" class Torpedo Boats, and of all submarines and 'E' Boats.

4. The German High Command will also despatch within 48 hours after the surrender becomes effective a responsible officer, not below the rank of Captain, by coastal craft to report to the Admiral Commanding at DOVER for onward routing to Commander-in-Chief, THE NORE, with:

- a. Corrected copies of charts showing all mine-

fields in the NORTH SEA SOUTH of  $54^{\circ}30'$  NORTH and EAST of  $1^{\circ}30'$  EAST laid by German and German-controlled vessels or aircraft, positions of all wrecks, booms and all other underwater obstructions; details of all German Convoy routes and searched channels in this area, and of all buoys, lights and other navigational aids which are under German control. Appropriate navigational publications are also required.

b. All available information concerning the numbers and types of German minesweepers and sperrbrechers in German controlled Dutch ports and German NORTH SEA ports that can be obtained without delaying his departure.

5. Another responsible German Naval Officer, with similar information is to be despatched by unescorted aircraft painted white to MANSTON Aerodrome position  $51^{\circ}20'$  NORTH,  $01^{\circ}20'$  EAST for onward routing to Commander-in-Chief, THE NORE.

6. The German High Command will issue instructions to certain German naval commands as indicated below:

a. The Naval Commander-in-Chief, NORTH SEA will despatch by coastal craft within 48 hours after the surrender becomes effective a responsible officer, not below the rank of Captain, to the Admiral Commanding at DOVER for onward routing to Commander-in-Chief, THE NORE, with:

(1) details of minesweeping operations carried out in the German convoy route between the HOOK OF HOLLAND and HAMBURG and in approaches to harbours between these two ports during the previous 60 days;

(2) numbers and positions of all British mines swept during these operations;

(3) details of all controlled minefields in this area

and information whether they have been rendered ineffective;

(4) details of all other mining and types of mines employed in the harbours and harbour approaches of CUXHAVEN, EMDEN, TERSCHELLING, TEXEL, IJMUIDEN, AMSTERDAM, SCHEVENINGEN, HOOK OF HOLLAND and ROTTERDAM;

(5) berthing facilities in the harbours enumerated in paragraph 6a.(4) above and the numbers of auxiliary minesweepers which can be accommodated;

(6) a list of all W/T and R/T call signs in use by the German Navy.

Any of the above information which cannot be obtained without delaying the departure of this officer will be forwarded subsequently as soon as it is available.

b. The Naval Commander-in-Chief, NORTH SEA, will also despatch as soon as possible by coastal craft to DOVER thirteen German Naval Officers who must be familiar with the German swept channels between the HOOK OF HOLLAND and CUXHAVEN. These officers will bring with them all the charts and books required for navigation in this area and will be accompanied by pilots (and interpreters if necessary).

c. The Naval Commander-in-Chief, NORWAY, will despatch by sea within 48 hours after the surrender becomes effective, a responsible officer, not below the rank of Captain to the Commander-in-Chief, ROSYTH, with corrected copies of charts showing all German minefields in the NORTH SEA, NORTH of 56° NORTH, all wrecks, booms and other underwater obstructions, details of German convoy routes and searched channels in this area and will be accompanied by pilots (and



wegian ports and of all buoys, lights and other navigational aids in this area. This officer will also bring with him the disposition of all 'U' Boats and details of all orders affecting their future movements. He will be accompanied by six German Naval Officers with pilots (and interpreters if necessary) who are familiar with the coastal swept channels between OSLO and TROMSO. These officers will bring with them all the charts and books required for navigation in Norwegian waters, and a list of all W/T and R/T call signs in use by the German Navy.

d. The Naval Commander-in-Chief, NORWAY, will despatch a duplicate party to the above with similar information by air in unescorted aircraft painted white to DREM Airfield 56°02' NORTH 02°48' WEST.

e. The Naval Commander-in-Chief, NORWAY, will report by W/T to the Commander-in-Chief, ROSYTH, within 48 hours after the surrender becomes effective, the following information:

(1) Berthing facilities at OSLO, CHRISTIAN-SAND, STAVANGER, BERGEN, TRONDHEIM, NARVIK and TROMSO.

(2) The approximate quantities of furnace oil fuel, diesel oil fuel and coal at all the principal Norwegian ports between OSLO and TROMSO.

7. The German Admiral SKAGGERAK will despatch by sea within 48 hours after the surrender becomes effective, a responsible officer not below the rank of Captain, to the Commander-in-Chief, ROSYTH, with corrected copies of charts showing all German minefields, wrecks booms and other underwater obstruction, details of German convoy routes and searched channels, buoys, lights and other navigational aids in the SKAGGERAK, KATTEGAT, THE BELTS AND SOUND, KIEL BAY



AND BALTIC WATERS WEST OF 14° EAST. This officer will also bring with him the disposition of all 'U' boats in the above area and details of all orders affecting their future movements. He will be accompanied by three German Naval officers with pilots (and interpreters if necessary) who are familiar with the coastal swept channels, and channels in Swedish territorial waters, in the waters referred to above. These officers will bring with them all the charts and books required for navigation in these waters, and a list of all W/T and R/T call signs in use by the German Navy.

The German Admiral SKAGGERAK will despatch a duplicate party to that specified above, with similar information, by air in unescorted aircraft painted white to DREM Airfield 56°02' NORTH 02°48' WEST.

8. The German Naval Officers who will be despatched to DOVER and ROSYTH by sea will proceed to positions in latitude 51°19' NORTH longitude 1°43' EAST and latitude 56°47' NORTH longitude 1°13' WEST respectively, where they will be met by British warships and escorted to their destination. The ships or craft in which they travel are to fly a large white flag at the masthead by day and are to illuminate these white flags by night. These ships are to broadcast their positions hourly by W/T on 500 ks. (600 Metres) whilst on passage.

*Information required within fourteen days*

9. The German High Command will furnish the following information to the Allied Naval Commander, Expeditionary Force, at \_\_\_\_\_ by \_\_\_\_\_ within fourteen days of cessation of hostilities.

a. Locations of all warships, auxiliaries and armed

costal craft operating under the orders of the German Naval Command stating particulars of the operational unit to which they are attached, giving approximate totals of all naval personnel embarked in each vessel, (including naval flak and merchant ship flak).

b. A statement of the organizations of all naval shore Commands, giving location of all naval establishments, including establishments for experiment and research, names of all Commanding Officers and Principal Staff Officers of the rank of Commander and above, and approximate totals of the personnel located in each establishment.

c. A statement of the strength and location of all naval land forces including naval infantry, naval flak, merchant ship flak and naval personnel manning naval coast artillery and full particulars of all Coastal and port defenses giving nature and locations.

d. Lists of stocks of furnace oil fuel, diesel oil fuel, petrol and coal of 500 tons and more at, or in the vicinity of, all ports between IJMUIDEN and HAMBURG inclusive.

e. A statement of location of the principal naval armament depots with approximate overall stocks of each major item held.

f. The following communications information:

(1) location and details concerning all V/S, W/T (including D/F) and radar stations in use by, and under construction for the German Navy, these details to include types and capabilities of all equipment fitted.

(2) details of the current naval W/T organization, lists of W/T R/T call signs in force, and allocation of all frequencies for communication and radar purposes.

(3) location and details of all naval communi-

cations (including Infra-Red) and naval radar training and research establishments.

g. Full details of all German minefields in the NORTH SEA, SKAGGERAK, KATTEGAT, BELTS and SOUND.

h. Full details of the German naval minesweeping organization including the communications organization.

j. Full details of the communications (including Infra-Red) and radar equipment fitted in all German minesweepers and sperrbrechers.

k. Technical details of all types of minesweeping gear in use by the German Navy.

l. Details of all mining and types of mines employed and of berthing facilities available for ships of 150 feet in length and 16 feet draught at:

BREMERHAVEN  
WILHELSHAVEN  
SCHIERMONNIKOOG  
DELFZIJL

10. The German High Command will also furnish the Allied Naval Commander, Expeditionary Force, with two copies of all coding and cyphering systems which have been, are being, or were to be used by the German Navy with the necessary instructions for their use and the dates between which they have been, or were to have been used.

## PART II—CONTROL AND DISARMAMENT

*Orders to warships, auxiliaries, merchant ships and other craft*

11. The German High Command will forthwith direct all German and German-controlled warships, auxiliaries, merchant ships and other craft to comply with the following instructions:

a. All warships, auxiliaries, merchant ships and other craft in harbour are to remain in harbour pending further directions from the Allied Representatives.

b. All warships, auxiliaries, merchant ships and other craft at sea are to report their positions in plain language immediately to the nearest British, US or Soviet Coast Wireless Telegraphy station on 500 kc/s (600 metres), and are to proceed to the nearest German or Allied port or such ports as the Allied Representatives may direct, and remain there pending further directions from the Allied Representatives. At night they are to show lights and to display searchlights with beams held vertically.

c. All warships and merchant ships whether in port or at sea will immediately train all weapons fore and aft. All torpedo tubes will be unloaded and breech blocks will be removed from all guns.

d. All warships and merchant ships in German or German-controlled harbours will immediately land and store in safety all ammunition, warheads and other explosives. They will land all portable weapons but, pending further instructions, warships will retain on board the fixed armament. Fire control and all other equipment will be maintained on board intact and fully efficient.

e. All minesweeping vessels are to carry out the measures of disarmament prescribed in *c.* and *d.* above, (except that they will, however, retain on board such portable weapons and explosives as are required for minesweeping purposes) and are to be prepared immediately for minesweeping service under the direction of the Allied Representatives. They will complete with fuel where necessary.

f. All German salvage vessels are to carry out the measures of disarmament prescribed in *c.* and *d.*



above (except that they will retain on board such explosives as are required for salvage purposes.) These vessels, together with all salvage equipment and personnel, are to be prepared for immediate salvage operations under the direction of the Allied Representatives, completing with fuel where necessary for this purpose.

g. The movement of transport on the inland waterways of GERMANY may continue, subject to orders from the Allied Representatives. No vessels moving on inland waterways will proceed to neutral waters.

### *Submarines*

12. The German High Command will transmit by W/T on appropriate frequencies the two messages in Annexures 'A' and 'B', which contain instructions to submarines at sea.

### *Naval aircraft*

13. The German High Command will forthwith direct that:

- a. German naval aircraft are not to leave the ground or water or ship pending directions from the Allied Representatives;
- b. naval aircraft in the air are to return immediately to their bases.

### *Neutral shipping*

14. The German High Command will forthwith direct that all neutral merchants ships in German and German-controlled ports are to be detained pending further directions from the Allied Representatives.

### *Orders relating to sabotage, scuttling, safety measures, pilotage and personnel*

15. The German High Command will forth with issue categorical directions that:

a. No ship, vessel or aircraft of any description is to be scuttled or any damage done to their hull, machinery or equipment.

b. all harbour works and port facilities of whatever nature, including telecommunications and radar stations, are to be preserved and kept free from destruction or damage pending further directions from the Allied Representatives, and all necessary steps taken and all necessary orders issued to prohibit any act of scuttling, sabotage, or other wilful damage.

c. all boom defenses at all ports and harbours are to be opened and kept open at all times; where possible, they are to be removed.

d. all controlled minefields at all ports and harbours are to be disconnected and rendered ineffective.

e. all demolition charges in all ports and harbour works are to be removed or rendered ineffective and their presence indicated.

f. the existing wartime system of navigational lighting is to be maintained, except that all dimmed lights are to be shown at full brilliancy, and lights only shown by special arrangements are to be exhibited continuously.

*In particular:*

(1) HELIGOLAND Light is to be burnt at full brilliancy.

(2) The buoyage of the coastal convoy route from the HOOK OF HOLLAND to HAMBURG is to be commenced, mid-channel buoys being laid six miles apart.

(3) Two ships are to be anchored as mark vessels in the following positions:

54°20' N, 5°00'E.

54°20' N, 6°30'E.

These ships are to fly a large black flag at the mast-head by day and by night are to flash a searchlight vertically every 30 seconds.

g. All pilotage services are to continue to operate and all pilots are to be held at their normal stations ready for service and equipped with charts.

h. German Naval and other personnel concerned in the operation of ports and administrative services in ports are to remain at their stations and to continue to carry out their normal duties.

### *Personnel*

16. The German High Command will forthwith direct that except as may be required for the purpose of giving effect to the above special orders:

a. all personnel in German warships, auxiliaries, merchant ships and other craft, are to remain on board their ships pending further direction from the Allied Representatives.

b. all Naval personnel ashore are to remain in their establishments.

17. The German High Command will be responsible for the immediate and total disarmament of all naval personnel on shore. The orders issued to the German High Command in respect of the disarmament and war material of land forces will apply also to naval personnel on shore.

Signed H. M. BURROUGH,  
*For the Supreme Commander, AEF.*

Dated 0241 7th MAY 1945  
Rheims, France

Annexure 'A'

## SURRENDER OF GERMAN 'U' BOAT FLEET

*To all 'U' Boats at sea:*

Carry out the following instructions forthwith which have been given by the Allied Representatives.

- (A) Surface immediately and remain surfaced.
- (B) Report immediately in P/L your position in latitude and longitude and number of your 'U' Boat to nearest British, US, Canadian or Soviet coast W/T station on 500 kc/s (600 metres) and to call sign GZZ 10 on one of the following high frequencies: 16845-12685 or 5970 kc/s.
- (C) Fly a large black or blue flag by day.
- (D) Burn navigation lights by night.
- (E) Jettison all ammunition, remove breach-blocks from guns and render torpedoes safe by removing pistols. All mines are to be rendered safe.
- (F) Make all signals in P/L.
- (G) Follow strictly the instructions for proceeding to Allied ports from your present area given in immediately following message.
- (H) Observe strictly the orders of Allied Representatives to refrain from scuttling or in any way damaging your 'U' Boat.

2. These instructions will be repeated at two-hour intervals until further notice.

ANNEXURE 'B'

*To all 'U' Boats at sea.* Observe strictly the instructions already given to remain fully surfaced. Report your position course and speed every 8 hours. Obey any instruction that may be given you by any Allied authority.

The following are the areas and routes for 'U' Boats surrendering:



(1) Area 'A'.

a. Bound on West by meridian 026 degs West and South by parallel 043 degs North in Barents Sea by meridian 020 degs East in Baltic Approaches by line joining The Naze and Hantsholm but excludes Irish Sea between 051 degs thirty mins and 055 degs 00 mins North and English Channel between line of Lands End Scilly Islands Ushant and line of Dover-Calais.

b. Join one of following routes at nearest point and proceed along it to Loch Eriboll (058 degs 33 minutes North 004 degs 37 mins West).

Blue route: All positions North and West unless otherwise indicated

The functions of the executive committee and the staffs will be to advise the Allied Council and carry out its decisions.

As soon as departments of a central Austrian administration are in a position to operate satisfactorily, they will be directed to assume their respective functions as regards Austria as a whole, and will fulfill them under the control of the Allied Commission.

The administration of the City of Vienna will be directed by an inter-Allied governing authority, which will operate under the general direction of the Allied Council and will consist of four commandants. They will be assisted by a technical staff which will supervise and control the activities of the local organs.

Liaison with other United Nations' Governments chiefly interested will be insured by the appointment by such Governments of military missions which may include civilian members to the Allied Council.

United Nations organizations will, if admitted by the Allied Council to operate in Austria, be subordinate to the Allied Commission and answerable to it.

SUMMARY OF THE AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED KINGDOM, THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC ON ZONES OF OCCUPATION IN AUSTRIA.

1—Austria within its 1937 frontiers will, for purposes of occupation be divided into four zones, one to be allotted to each power as follows:

The northeastern (Soviet) zone will consist of the Province of Lower Austria, with the exception of the City of Vienna, that part of the Province of Upper Austria situated on the left bank of the Danube and the Province of Burgenland.

The northwestern (United States) zone will consist of the Province of Salzburg and that part of the Province of Upper Austria situated on the right bank of the Danube.

The western (French) zone will consist of the Provinces of Tyrol and Vorarlberg.

The southern (United Kingdom) zone will consist of the Province of Carinthia, including Ost-Tyrol, and the Province of Styria, except the area of the Burgenland.

2—The City of Vienna within its 1937 boundaries will be jointly occupied by the armed forces of the four powers and its administration will be directed by an inter-Allied governing authority consisting of four commandants appointed by their respective commander in chief.

The district of the Innere Stadt will be occupied by armed forces of the four powers.

The districts of Leopoldstadt, Brigittenau, Floridsdorf, Wieden and Favoriten will be occupied by armed forces of the Soviet Union;

The districts of Neubau, Josefstadt, Hernals, Alsergrund, Währing and Döbling will be occupied by armed forces of the United States of America;

The districts of Mariahilf, Penzing, Fünfhaus (including the district of Rudolfsheim) and Ottakring will be occupied by armed forces of the French Republic;

The districts of Heitzing, Margareten, Meidling, Landstrasse and Simmering will be occupied by armed forces of the United Kingdom.

### **XIII. SOVIET WAR DECLARATION ON JAPAN**

(New York Times, Aug. 9, 1945)

*LONDON, Aug. 8—Foreign Commissar Molotoff's announcement of the declaration of war, as broadcast by Moscow, follows:*

On Aug. 8, People's Commissar for Foreign Affairs of the U.S.S.R. Molotoff received the Japanese Ambassador, Mr. Sato, and gave him, on behalf of the Soviet Government, the following for transmission to the Japanese Government:

"After the defeat and capitulation of Hitlerite Germany, Japan became the only great power that still stood for the continuation of the war.

"The demand of the three powers, the United States, Great Britain and China, on July 26 for the unconditional surrender of the Japanese armed forces was rejected by Japan, and thus the proposal of the Japanese Government to the Soviet Union on mediation in the war in the Far East loses all basis.

"Taking into consideration the refusal of Japan to capitulate, the Allies submitted to the Soviet Government a proposal to join the war against Japanese aggression and thus shorten the duration of the war, reduce the number of victims and facilitate the speedy restoration of universal peace.

"Loyal to its Allied duty, the Soviet Government has accepted the proposal of the Allies and has joined in the declaration of the Allied Powers of July 26.

"The Soviet Government considers that this policy is the only

means able to bring peace nearer, free the people from further sacrifice and suffering and give the Japanese people the possibility of avoiding the dangers and destruction suffered by Germany after her refusal to capitulate unconditionally.

"In view of the above, the Soviet Government declares that from tomorrow, that is from Aug. 9, the Soviet Government will consider itself to be at war with Japan."

049 degs 00 mins	009 degs 00 mins	053 degs 00 mins
012 degs 00 mins	058 degs 00 mins	011 degs 00 mins
059 degs 00 mins	005 degs 30 mins	thence to Loch Eriboll.

Red route: 053 degs 45 mins North 003 degs 00 mins East

059 degs 45 mins	001 degs 00 mins	059 degs 45 mins
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003 degs 00 mins thence to Loch Eriboll.

c. Arrive at Loch Eriboll between sunrise and 3 hours before sunset.

## (2) Area 'B'

a. The Irish Sea between parallel of 051 degs 30 mins and 055 degs 00 mins North.

b. Proceed Beaumaris (053 degs 19 mins North 003 degs 58 mins West) to arrive between sunrise and 3 hours before sunset.

## (3) Area 'C'

a. The English Channel between line of Lands End — Scilly Isles — Ushant and line of Dover — Calais.

b. 'U' Boats in area 'C' are to join one of following routes at nearest point: Green route: position 'A' 049 degs 10 mins North 005 degs 40 mins West position 'B' 050 degs 00 mins North 003 degs 00 mins West thence escorted to Weymouth. Orange route: position 'X' 050 degs 30 mins North 000 degs 50 mins East position 'Y' 050 degs 10 mins North 001 degs 50 mins West thence escorted to Weymouth.

c. Arrive at either 'B' or 'Y' between sunrise and 3 hours before sunset.



## (4) Area 'D'

a. Bound on West by lines joining The Naze and Hantsholm and on East by lines joining Lubeck and Trelleborg.

b. Proceed to Kiel.

## (5) Area 'E'

a. Mediterranean Approaches bound on North by 043 degs North and South by 026 degs North and on West by 026 degs West.

b. Proceed to a rendezvous in position 'A' 036 degs 00 mins North 011 degs 00 mins West and await escort reporting expected time of arrival in plain language to Admiral Gibraltar on 500 kc/s.

c. Arrive in position 'A' between sunrise and noon G.M.T.

## (6) Area 'F'

a. The North and South Atlantic West of 026 degs West.

b. Proceed to nearest of one of following points arriving between sunrise and 3 hours before sunset: W 043 degs 30 mins North 070 degs 00 mins West approach from a point 15 miles due East X 038 degs 20 mins North 074 degs 25 mins West approach from a point 15 miles due East Y 047 degs 18 mins North 052 degs 30 mins West approach from point 047 degs 18 mins North 051 degs 30 mins West on a course 270 degs Z 043 degs 31 mins North 065 degs 05 mins West approach from point 042 degs 59 mins North 064 degs 28 mins West on a course 320 degs.

#### XIV. STATEMENT ON AUSTRIA

(New York Times, Aug. 9, 1945)

##### SUMMARY OF THE AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED KINGDOM, THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC ON CONTROL MACHINERY IN AUSTRIA.

The Allied control machinery in Austria will consist of an Allied Council, an executive committee and staffs appointed by the four governments concerned, the whole organization being known as the Allied Commission for Austria.

The primary tasks of the Allied Commission for Austria will be:

To achieve the separation of Austria from Germany;

To secure the establishment, as soon as possible, of a central Austrian administrative machine;

To prepare the way for the establishment of a freely elected Austrian government;

Meanwhile, to provide for the administration of Austria to be carried on satisfactorily.

The Allied Council will consist of four military commissioners who will jointly exercise supreme authority in Austria in respect of matters affecting Austria as a whole. Subject to this, each military commissioner in his capacity as commander in chief of the forces of occupation furnished by his Government will exercise full authority in the zone occupied by those forces.

The Allied Council, whose decision should be unanimous, will initiate plans and reach decisions on the chief questions affecting Austria as a whole and will insure appropriate uniformity of action in zones of occupation.

## XV. OFFER OF SURRENDER FROM JAPANESE GOVERNMENT

(Department of State Bulletin, Vol. XIII, No. 320, Aug. 12, 1945)

AUGUST 10, 1945

SIR:

I have the honor to inform you that the Japanese Minister to Switzerland, upon instructions received from his Government, has requested the Swiss Political Department to advise the Government of the United States of America of the following:

"In obedience to the gracious command of His Majesty the Emperor who, ever anxious to enhance the cause of world peace, desires earnestly to bring about a speedy termination of hostilities with a view to saving mankind from the calamities to be imposed upon them by further continuation of the war, the Japanese Government several weeks ago asked the Soviet Government, with which neutral relations then prevailed, to render good offices in restoring peace vis a vis the enemy powers. Unfortunately, these efforts in the interest of peace having failed, the Japanese Government in conformity with the august wish of His Majesty to restore the general peace and desiring to put an end to the untold sufferings entailed by war as quickly as possible, have decided upon the following.

"The Japanese Government are ready to accept the terms enumerated in the joint declaration which was issued at Potsdam on July 26th, 1945, by the heads of the Governments of the United States, Great Britain, and China, and later subscribed by the Soviet Government, with the understanding that the said declaration does not comprise any demand which prejudices the prerogatives of His Majesty as a Sovereign Ruler.

"The Japanese Government sincerely hope that this understanding is warranted and desire keenly that an explicit indication to that effect will be speedily forthcoming."

In transmitting the above message the Japanese Minister added that his Government begs the Government of the United States to forward its answer through the intermediary of Switzerland. Similar requests are being transmitted to the Governments of Great Britain and the Union of Soviet Socialist

Republics through the intermediary of Sweden, as well as to the Government of China through the intermediary of Switzerland. The Chinese Minister at Berne has already been informed of the foregoing through the channel of the Swiss Political Department.

Please be assured that I am at your disposal at any time to accept for and forward to my Government the reply of the Government of the United States.

Accept [etc.]

GRASSLI  
*Chargé d'Affaires ad interim  
of Switzerland.*

The Honorable  
JAMES F. BYRNES  
*Secretary of State.*

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AUGUST 11, 1945

SIR:

I have the honor to acknowledge receipt of your note of August 10, and in reply to inform you that the President of the United States has directed me to send to you for transmission by your Government to the Japanese Government the following message on behalf of the Governments of the United States, the United Kingdom, the Union of Soviet Socialist Republics, and China:

“With regard to the Japanese Government’s message accepting the terms of the Potsdam proclamation but containing the statement, ‘with the understanding that the said declaration does not comprise any demand which prejudices the prerogatives of His Majesty as a sovereign ruler,’ our position is as follows:

“From the moment of surrender the authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander of the Allied powers who will take such steps as he deems proper to effectuate the surrender terms.

“The Emperor will be required to authorize and ensure the



signature by the Government of Japan and the Japanese Imperial General Headquarters of the surrender terms necessary to carry out the provisions of the Potsdam Declaration, and shall issue his commands to all the Japanese military, naval and air authorities and to all the forces under their control wherever located to cease active operations and to surrender their arms, and to issue such other orders as the Supreme Commander may require to give effect to the surrender terms.

"Immediately upon the surrender the Japanese Government shall transport prisoners of war and civilian internees to places of safety, as directed, where they can quickly be placed aboard Allied transports.

"The ultimate form of government of Japan shall, in accordance with the Potsdam Declaration, be established by the freely expressed will of the Japanese people.

"The armed forces of the Allied Powers will remain in Japan until the purposes set forth in the Potsdam Declaration are achieved."

Accept [etc.].

JAMES F. BYRNES,  
*Secretary of State.*

MR. MAX GRÄSSLER

*Chargé d'Affaires ad interim of  
Switzerland.*

## **XVI. AGREEMENT FOR THE ESTABLISHMENT OF AN INTERNATIONAL MILITARY TRIBUNAL**

(Department of State Bulletin, Vol. XIII, No. 320, Aug. 12, 1945)

AGREEMENT BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA, THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC, THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS.

Whereas the United Nations have from time to time made declarations of their intention that war criminals shall be brought to justice;

And whereas the Moscow Declaration of the 30th

October 1943 on German atrocities in occupied Europe stated that those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments that will be created therein;

And whereas this declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographic location and who will be punished by the joint decision of the Governments of the Allies;

Now, therefore, the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics (hereinafter called "the signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this agreement.

*Article 1.* There shall be established, after consultation with the Control Council for Germany, and International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location, whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

*Article 2.* The constitution, jurisdiction, and functions of the International Military Tribunal shall be those set out in the charter annexed to this agreement, which Charter shall form an integral part of this agreement.

*Article 3.* Each of the signatories shall take the

necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The signatories shall also use their best endeavors to make available for investigation of the charges against, and the trial before the International Military Tribunal, such of the major war criminals as are not in the territories of any of the signatories.

*Article 4.* Nothing in this agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

*Article 5.* Any Government of the United Nations may adhere to this agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

*Article 6.* Nothing in this agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals.

*Article 7.* This agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this agreement.

In witness whereof the undersigned have signed the present agreement.

Done in quadruplicate in London this eighth day of

August, 1945, each in English, French, and Russian and each text to have equal authenticity.

For the Government of the United States of  
America

ROBERT H. JACKSON

For the Provisional Government of the French Republic

ROBERT FOLCO

For the Government of the United Kingdom of  
Great Britain and Northern Ireland  
JOWITT

For the Government of the Union of Soviet Socialist  
Republics

I. T. NIKITCHENKO

A. N. TRAININ

#### **CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL**

##### **I. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL**

*Article 1.* In pursuance of the agreement signed on the eighth day of August, 1945, by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

*Article 2.* The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the signatories. The alternates shall, so far as they are able,



be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place.

*Article 3.* Neither the Tribunal, its members, nor their alternates can be challenged by the prosecution or by the defendants or their counsel. Each signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a trial other than by an alternate.

*Article 4.*

(a) The presence of all four members of the Tribunal, or the alternate for any absent member, shall be necessary to constitute the quorum.

(b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four signatories, the representative of that signatory on the Tribunal shall preside.

(c) Save as aforesaid the Tribunal shall take decisions by a majority vote, and in case the votes are evenly divided the vote of the President shall be decisive, provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

*Article 5.* In case of need and depending on the number of the matters to be tried, other tribunals may be set up, and the establishment, functions and procedure of each tribunal shall be identical and shall be governed by this Charter.

## II. JURISDICTION AND GENERAL PRINCIPLES

*Article 6.* The Tribunal established by the agreement referred to in article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against peace. Namely, planning, preparation, initiation, or waging of a war of aggression or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) War Crimes. Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity. Namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

*Article 7.* The official position of defendants, whether as heads of state or responsible officials in government departments, shall not be considered as freeing them from responsibility or mitigating punishment.

*Article 8.* The fact that the defendant acted pursuant to order of his government or of a superior shall not free him from responsibility but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

*Article 9.* At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

*Article 10.* In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any signatory shall have the right to bring individuals to trial for membership

therein before national, military, or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

*Article 11.* Any person convicted by the Tribunal may be charged before a national, military, or occupation court, referred to in article 10 of this Charter, with a crime other than of membership in a criminal group or organization, and such court may after convicting him impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

*Article 12.* The Tribunal shall have the right to take proceedings against a person charged with crimes set out in article 6 of this Charter in his absence if he has not been found or if the Tribunal for any reason finds it necessary in the interests of justice to conduct the hearing in his absence.

*Article 13.* The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

### III. COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

*Article 14.* Each signatory shall appoint a chief prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The chief prosecutors shall act as a committee for the following purposes:

(a) To agree upon a plan of the individual work of each of the chief prosecutors and his staff.

(b) To settle the final designation of major war criminals to be tried by the Tribunal.

(c) To approve the indictment and the documents to be submitted therewith.



(d) To lodge the indictment and the accompanying documents with the Tribunal.

(e) To draw up and recommend to the Tribunal for its approval draft rules of procedure contemplated by article 13 of this Charter. The Tribunal shall have power to accept with or without amendments or to reject the rules so recommended.

The committee shall act in all the above matters by a majority vote and shall appoint a chairman as may be convenient and in accordance with the principle of rotation, provided that, if there is an equal division of vote concerning the designation of a defendant to be tried by the Tribunal or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular defendant be tried or the particular charges be preferred against him.

*Article 15.* The chief prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

(a) investigation, collection, and production before or at the trial of all necessary evidence.

(b) The preparation of the indictment for approval by the committee in accordance with paragraph (c) of article 14 hereof.

(c) The preliminary examination of all necessary witnesses and of the defendants.

(d) To act as prosecutor at the trial.

(e) To appoint representatives to carry out such duties as may be assigned to them.

(f) To undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the trial.

It is understood that no witness or defendant

detained by any signatory shall be taken out of the possession of that signatory without its assent.

#### IV. FAIR TRIAL FOR DEFENDANTS

*Article 16.* In order to insure fair trial for the defendants the following procedure shall be followed:

(a) The indictment shall include full particulars specifying in detail the charges against the defendants. A copy of the indictment and of all the documents lodged with the indictment, translated into a language which he understands, shall be furnished to the defendant at a reasonable time before the trial.

(b) During any preliminary examination or trial of a defendant he shall have the right to give any explanation relevant to the charges made against him.

(c) A preliminary examination of a defendant and his trial shall be conducted in or translated into a language which the defendant understands.

(d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of counsel.

(e) A defendant shall have the right through himself or through his counsel to present evidence at the trial in support of his defense and to cross-examine any witness called by the prosecution.

#### V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

*Article 17.* The Tribunal shall have the power:

(a) To summon witnesses to the trial and to require their attendance and testimony and to put questions to them.

(b) To interrogate any defendant.

(c) To require the production of documents and other evidentiary material.

(d) To administer oaths to witnesses.

(c) To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

*Article 18.* The Tribunal shall:

(a) Confine the trial strictly to an expeditious hearing of the issues raised by the charges.

(b) Take strict measures to prevent any action which will cause unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.

(c) Deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any defendant or his counsel from some or all further proceedings but without prejudice to the determination of the charges.

*Article 19.* The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure and shall admit any evidence which it deems to have probative value.

*Article 20.* The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

*Article 21.* The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations.

*Article 22.* The permanent seat of the Tribunal shall be Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutor shall be held at Berlin in a place to be designated by the

Control Council for Germany. The first trial shall be held at Nuremberg and any subsequent trials shall be held at such places as the Tribunal may decide.

*Article 23.* One or more of the chief prosecutors may take part in the prosecution at each trial. The function of any chief prosecutor may be discharged by him personally or by any person or persons authorized by him.

The function of counsel for a defendant may be discharged at the defendant's request by any counsel professionally qualified to conduct cases before the courts of his own country or by any other person who may be specially authorized thereto by the Tribunal.

*Article 24.* The proceedings at the trial shall take the following course :

(a) The indictment shall be read in court.

(b) The Tribunal shall ask each defendant whether he pleads "guilty" of "not guilty."

(c) The prosecution shall make an opening statement.

(d) The Tribunal shall ask the prosecution and the defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.

(e) The witnesses for the prosecution shall be examined and after that the witnesses for the defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the prosecution or the defense.

(f) The Tribunal may put any question to any witness and to any defendant at any time.

(g) The prosecution and the defense shall interrogate and may cross-examine any witnesses and any defendant who gives testimony.

(h) The defense shall address the court.



(i) The prosecution shall address the court.

(j) Each defendant may make a statement to the Tribunal.

(k) The Tribunal shall deliver judgment and pronounce sentence.

*Article 25.* All official documents shall be produced, and all court proceedings conducted, in English, French, and Russian and in the language of the defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting as the Tribunal considers desirable in the interests of justice and public opinion.

## VI. JUDGMENT AND SENTENCE

*Article 26.* The judgment of the Tribunal as to the guilt or the innocence of any defendant shall give the reasons on which it is based and shall be final and not subject to review.

*Article 27.* The Tribunal shall have the right to impose upon a defendant, on conviction, death, or such other punishment as shall be determined by it to be just.

*Article 28.* In addition to any punishment imposed by it the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

*Article 29.* In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences but may not increase the severity thereof. If the Control Council for Germany, after any defendant has been convicted and sentenced, discovers fresh evidence which in its opinion would found a fresh charge against him, the Council shall report accordingly to the Committee established under article 14 hereof for such

action as they may consider proper, having regard to the interests of justice.

## VII. EXPENSES

*Article 30.* The expenses of the Tribunal and of the trials shall be charged by the signatories against the funds allotted for maintenance of the Control Council for Germany.

## **XVII. JAPANESE ACCEPTANCE OF POTSDAM DECLARATION STATEMENT BY THE PRESIDENT**

(The Department of State Bulletin, Vol. No. 321, Aug. 19, 1945)

I have received this afternoon a message from the Japanese Government in reply to the message forwarded to that Government by the Secretary of State on August 11. I deem this replay a full acceptance of the Potsdam Declaration which specifies the unconditional surrender of Japan. In the reply there is no qualification.

Arrangements are now being made for the formal signing of surrender terms at the earliest possible moment.

General Douglas MacArthur has been appointed the Supreme Allied Commander to receive the Japanese surrender. Great Britain, Russia, and China will be represented by high-ranking officers.

Meanwhile, the Allied armed forces have been ordered to suspend offensive action.

The proclamation of V-J Day must wait upon the formal signing of the surrender terms by Japan.

Following is the Japanese Government's message accepting our terms:

"Communication of the Japanese Government of August 14, 1945, addressed to the Governments of the United States, Great Britain, the Soviet Union, and China:

"With reference to the Japanese Government's note of August

10 regarding their acceptance of the provisions of the Potsdam declaration and the reply of the Governments of the United States, Great Britain, the Soviet Union, and China sent by American Secretary of State Byrnes under the date of August 11, the Japanese Government have the honor to communicate to the Government of the four powers as follows:

"1. His Majesty the Emperor has issued an Imperial rescript regarding Japan's acceptance of the provisions of the Potsdam declaration.

"2. His Majesty the Emperor is prepared to authorize and ensure the signature by his Government and the Imperial General Headquarters of the necessary terms for carrying out the provisions of the Potsdam declaration. His Majesty is also prepared to issue his commands to all the military, naval, and air authorities of Japan and all the forces under their control wherever located to cease active operations, to surrender arms and to issue such other orders as may be required by the Supreme Commander of the Allied Forces for the execution of the above-mentioned terms."

**EXCHANGE OF NOTES BETWEEN SWISS  
CHARGE AND SECRETARY OF STATE**

AUGUST 14, 1945.

SIR:

I have the honor to refer to your note of August 11, in which you requested me to transmit to my Government the reply of the Governments of the United States, the United Kingdom, the Union of Soviet Socialist Republics, and China to the message from the Japanese Government which was communicated in my note of August 10.

At 20.10 today (Swiss Time) the Japanese Minister to Switzerland conveyed the following written statement to the Swiss Government for transmission to the four Allied governments:

Accept [etc.]

GRASSLI  
*Chargé d'Affaires ad interim  
of Switzerland*

AUGUST 14, 1945.

SIR:

With reference to your communication of today's date, transmitting the reply of the Japanese Government to the communication which I sent through you to the Japanese Government on August 11, on behalf of the Governments of the United States, China, the United Kingdom, and the Union of Soviet Socialist Republics, which I regard as full acceptance of the Potsdam Declaration and of my statement of August 11, 1945, I have the honor to inform you that the President of the United States has directed that the following message be sent to you for transmission to the Japanese Government:

"You are to proceed as follows:

"(1) Direct prompt cessation of hostilities by Japanese forces, informing the Supreme Commander for the Allied Powers of the effective date and hour of such cessation.

"(2) Send emissaries at once to the Supreme Commander for the Allied Powers with information of the disposition of the Japanese forces and commanders, and fully empowered to make any arrangements directed by the Supreme Commander for the Allied Powers to enable him and his accompanying forces to arrive at the place designated by him to receive the formal surrender.

"(3) For the purpose of receiving such surrender and carrying it into effect, General of the Army Douglas MacArthur has been designated as the Supreme Commander for the Allied Powers, and he will notify the Japanese Government of the time, place and other details of the formal surrender."

Accept [etc.]

JAMES F. BYRNES,  
*Secretary of State.*

MAX GRÄSSLI, Esquire,  
*Chargé d'Affaires ad interim of Switzerland.*



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